S. Hrg. 102-3

POLITICAL STATUS OF PUERTO RICO

HEARINGS

BEFORE THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

S. 244

TO PROVIDE FOR A REFERENDUM ON THE POLITICAL STATUS OF PUERTO RICO

JANUARY 30 AND FEBRUARY 7, 1991

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POLITICAL STATUS OF PUERTO RICO

WEDNESDAY, JANUARY 30, 1991

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:37 a.m. in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The committee will come to order. Today the committee will hold the first of two hearings on S. 244, legislation to provide for Puerto Rican self-determination. We will hear from the presidents of the three principal political parties. Next Thursday, the committee will receive the views of the administration as well as the Attorney General.

This legislation, S. 244, is similar to S. 712 as considered last year and passed out of this committee to the floor of the Senate. It calls for a referendum in 1991 between three fully defined status options: commonwealth, statehood, and independence.

However, unlike S. 712, this bill would not be self-implementing. While I believe that the enactment of this bill would create a moral obligation to implement the status chosen by the people of Puerto Rico, the action of a future Congress would be required.

This exercise in self-determination, to be meaningful, requires two elements: first, an understanding on the part of the people of Puerto Rico on what they are choosing; second, a good-faith commitment on the part of the Congress to implement that which they choose. Anything less is not self-determination; it is self-delusion.

If the status options were self-defining, then definitions would not in fact be needed. But just what does independence mean, for example, regarding citizenship or regarding social security benefits or regarding military bases? What does statehood mean, for example, regarding section 936, regarding Federal programs, for example? Just what does commonwealth, for example, mean regarding sovereignty or citizenship or the permanence of the relation?

These are not mere parts or appurtenances to this issue. They are the core issues which determine the choice. A vote without an understanding of the meaning of the consequences of the choice is worse than no choice at all. It is mischievous. It would create unfulfilled expectations, which would be treated in fact without commitment by the Congress.

The House bill is substantially different. It involves such one-word descriptions. Proponents point out the difficulty of securing agreements on definitions and securing a commitment from Congress to deliver on the choice selected.

I am fully aware of these difficulties. However, it is time for Congress to decide. After over 90 years, it is past time for Congress to decide. And there is only one way to find out what the Congress will do, and that is to present meaningful legislation and get the answers.

These answers may disappoint some, may not fulfill all the expectations and hopes of others. But that is no reason to avoid asking the questions and getting the answers.

It is time to legitimate the status of Puerto Rico. Deception of ourselves and of the people of Puerto Rico neither serves our interests nor those of Puerto Rico. Congress should present the status options in terms acceptable to the Congress and let the people choose with confidence that their choice will be implemented.

This bill differs from last year's bill. First, it is not self-implementing. The appropriate title of this bill would be introduced in a subsequent Congress as the implementing legislation for the status which receives the majority.

Second, it includes all Finance Committee recommendations, which upholds the principles of an even playing field in economic benefits and budget neutrality with respect to the U.S. Treasury. In fact, the bill exceeds budget neutrality, as out-year estimates show net annual revenues of $2.6 billion to $3.3 billion under independence and $.7 billion to $1.8 billion under statehood.

Let me repeat that, because this is a very key element for all Senators to understand. Under this legislation, either statehood or independence would put the Treasury of the United States better off than it is today. So those who say that independence would cost a lot of money or statehood would cost a lot of money are not reading this bill. This bill in effect makes money for the Treasury.

The bill includes the recommendations of the Agriculture Committee, increasing food stamp benefits. However, the bill must be further amended to provide offsetting revenues. Under statehood those revenues are available with relatively minor changes from the phaseout of section 936 credits. Under commonwealth, more substantial changes are needed.

Let me explain that. In the last few days we got the advice from the Agriculture Committee as to what they would propose and they were increased benefits for food stamps. Those benefits would have to be paid for by phasing out section 936.

Now, under statehood, as already proposed in this legislation, in effect the benefits have been paid for. They have not been paid for by commonwealth, so that there will have to be an adjustment, and we have written Senator Bentsen from the Finance Committee to ask for his advice on how he would pay for those benefits.

So in effect, we expect that by the time this bill matriculates through this committee—and I trust it will—there will be a somewhat down-phasing of section 936 or in some other provision of the tax code in order to accommodate those changes in food stamps.

Fourth, other, more limited changes have been made. In title I these changes deal with the mechanics of the referendum process.

In title III immigration and defense have been clarified. In title IV the principles of commonwealth are modified.

One issue not included in the bill which will certainly be raised today—and I invite Senators' attention to it—is the timing of statehood if it is selected by the people and approved by the Congress. Should statehood be effective before the economic transition period or after?

It is my feeling that statehood, if chosen by the people, should be implemented as quickly as possible, consistent with having a phase-in period. Now, the problem with the phase-in period is the legality of a phase-in period, whether you can deny, for example, full benefits on food stamps or other Federal programs for a State, or whether you have to wait for the phase-in period and declare statehood after that.

The statehooders have a proposal on that. They requested that we put it in the draft as filed. We did not do so because we followed the principle here we have tried to establish, which is to give parties a chance to be heard on the major provisions of this bill before we insert them.

So I alert Senators to that issue, the issue of the phase-in period or the transition period and when statehood would be declared.

I am committed to enactment of this bill by July the 4th so that the people may vote in 1991 and well before the 1992 island-wide general elections. I urge my colleagues to support this process. At a time when people throughout the world struggle to exercise self-determination, it is with a solemn sense of responsibility that we in this committee must respond.

This legislation challenges the core values of our American democracy. We have preached self-determination all over the world, in the Baltic states, in Nicaragua, in Panama. We have sent raiding parties in, we have enacted sanctions. We have talked about democracy and self-determination all over this world.

Now, these are 3.5 million American citizens, American citizens. They already have Federal programs, diminished to be sure, but Federal programs that cost this Treasury a lot of money. The issue is not whether we are going to break the bank. The issue is self-determination: self-determination.

This country owes Puerto Rico nothing less than self-determination. It is time that we practice what we preach in our own backyard and that we give these American citizens from Puerto Rico that chance to legitimize their status and to choose for themselves their political system.

[The text of S. 244 follows:]

102D CONGRESS
1ST SESSION

S. 244

To provide for a referendum on the political status of Puerto Rico.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 3), 1991

Mr. JOHNSTON (for himself, Mr. WALLOP, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To provide for a referendum on the political status of Puerto Rico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the United States of America recognizes the principle of self-determination and other applicable principles of international law with respect to Puerto Rico; and

(2) the United States is committed to a process of consultation and negotiation with the people of Puerto

Rico leading to a referendum on the issue of political status to be conducted in a fair and equitable manner.

SEC. 2. This Act may be cited as the "Puerto Rico Status Referendum Act".

TITLE I

SEC. 101. REFERENDUM.

(a) IN GENERAL.—An islandwide referendum shall be held in Puerto Rico in which qualified voters of the Commonwealth of Puerto Rico shall be presented a choice of three status options for Puerto Rico. The options shall appear on the ballot as follows:

(1) Statehood as set forth in title II of the Puerto Rico Status Referendum Act;

(2) Independence as set forth in title III of the Puerto Rico Status Referendum Act; and

(3) Commonwealth as set forth in title IV of the Puerto Rico Status Referendum Act.

(b) DATE OF REFERENDUM.—The referendum shall occur on December 2, 1991, or on a date during the autumn of calendar year 1991 as may be mutually agreed by the three principal political parties of Puerto Rico. If there is not a majority in favor of one of the three options, then there shall be, within thirty days, a runoff referendum between the two status options which had received the largest number of votes. Such referendum shall also include an option of "Neither of the Above". The Governor shall certify the results of the referendum to the President and to the Congress of the United States.

(c) APPLICABLE LAW.—(1) The referendum shall be conducted pursuant to the laws of the Commonwealth of Puerto Rico, except that eligibility to vote in the referendum shall be in accordance with the election laws of Puerto Rico as of August 1, 1990.

(2) Those Federal laws that apply to the election of the Resident Commissioner of Puerto Rico shall also apply to the referendum. Any reference in such Federal laws to elections shall be considered, where appropriate, to be a reference to the referendum, and any reference in such laws to candidates for office shall be considered, where appropriate, to be a reference to the political status options under the referendum.

(d) JUDICIAL REVIEW.—Any legal dispute or controversy arising out of this referendum shall be adjudicated in accordance with local laws and procedures, except that:

(1)(A) Any aggrieved person (including, without limitation, and political party, within sixty days after the certification by the Governor of the results of the referendum pursuant to title I, section 101(c), may institute an action to challenge the choice certified by the Governor on the basis that (1) an electoral irregularity or irregularities had occurred, and (2) that the irregularity or irregularities were so significant as to affect the outcome of the referendum and call into question the choice certified by the Governor.

(B) The three-judge court provided for in paragraph (2) shall have exclusive jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the aggrieved shall have exhausted any administrative or other remedies provided by Federal law or the law of Puerto Rico.

(C) In any proceeding instituted pursuant to this paragraph of this subsection, if the court finds that there has been an electoral irregularity or irregularities so significant as to affect the outcome of the referendum and call into question the choice certified by the Governor, the court is empowered to grant appropriate relief, including nullification of the entire referendum, ordering a recount or recounts, or any other relief deemed appropriate to preserve the integrity of the electoral process.

(D) The Attorney General of the United States is empowered to intervene at the request of the court in any proceeding brought under this section in order to assist in the gathering and presentation of evidence. Any aggrieved person with a Federal constitutional or

Federal statutory claim arising out of the same factual nexus as an action brought under this section may intervene in that action in a manner deemed timely by the court in its discretion. Failure of such an aggrieved person to timely intervene will result in foreclosure of that person's Federal constitutional or statutory claim.

(E) The court shall accord local law the benefit of local interpretation. The court is not required to provide de novo review of any and all claims of irregularities already determined by a local authority or tribunal. except as it deems necessary.

(2)(A) Any claims brought under the United States Constitution or a Federal statute, or any claim brought to challenge the result certified by the Governor, whether brought under this Act or under the law of the Commonwealth of Puerto Rico, shall be heard by a three-judge court in the District for the District of Columbia, which shall have exclusive jurisdiction over all such claims. This court now exercises exclusive jurisdiction over certain Voting Rights Act claims under 42 U.S.C. 1973c.

(B) The court shall receive evidence and hear argument, as it deems necessary. The provisions of 28 U.S.C. 2284(b)(3) shall apply to proceedings of the three-judge court. It shall be the duty of the Chief

Judge of the United States Court of Appeals for the District of Columbia to designate three judges, of whom at least one shall be a circuit judge and the remaining judge or judges shall be district court judges, to hear and determine any such claim. Hearings of the three-judge court shall be conducted in Puerto Rico. An appeal from a final judgment of the three-judge court will lie to the Supreme Court of the United States by way of certiorari.

(e) IMPLEMENTATION LEGISLATION.—(1) If the referendum results in a majority for one of the three status options, then to implement the status selected by the People of Puerto Rico, pursuant to this Act, the Chairman of the Senate Committee on Energy and Natural Resources and the Chairman of the House Committee on Interior and Insular Affairs shall introduce the appropriate title of this Act.

(2) Enactment of this section constitutes a commitment by Congress to implement the status receiving a majority.

(f) RATIFICATION.—Upon enactment, the implementation legislation shall take effect in accordance with its terms and upon approval by the people of Puerto Rico in a ratification vote.

(g) INFORMATION.—The Joint Committee on Printing shall provide a Referendum Information Booklet to each voter household in Puerto Rico at least thirty days before the referendum. The booklet shall contain the text of this Act, a translation of such text, and other appropriate information as set forth in the Statement of Managers regarding this Act. There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

TITLE II—STATEHOOD

SEC. 201. PROCLAMATION.

(a) If, pursuant to section 101(f) of the Puerto Rico Status Referendum Act, statehood is ratified, then the President shall issue a proclamation announcing the results of the election as so ascertained.

(b) Upon the issuance of the proclamation under subsection (a), the Commonwealth of Puerto Rico (hereafter in this title also referred to as "the State") shall, effective on January 1 of the fifth calendar year following the calendar year in which the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs, be declared to be a State of the United States of America, and shall be declared admitted into the Union on an equal footing with the other States.

SEC. 202. CONSTITUTION.

The Constitution of the Commonwealth of Puerto Rico shall always be republican in form and shall conform to the Constitution of the United States and the principles of the Declaration of Independence. The Constitution adopted by a vote of the people of Puerto Rico in the election held on

June 4, 1951, has been found by Congress to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and was accepted, ratified, and confirmed, through Public Law 447 of the Eighty-second Congress, March 3, 1952. The current Constitution of the Commonwealth of Puerto Rico as ratified by the people at the referendum held on June 4, 1951, is hereby accepted as the Constitution of the State.

SEC. 203. TERRITORY AND BOUNDARIES.

The State shall consist of all of the territory, together with the waters included in the seaward boundary, of the Commonwealth of Puerto Rico.

SEC. 204. STATE TITLE TO LANDS AND PROPERTY.

(a) The State and its political subdivisions shall have and retain title to all property, real and personal, which it currently holds, including, but not limited to, title to submerged lands heretofore granted to Puerto Rico.

(b) Any lands and other properties that, as of the date of admission of Puerto Rico into the Union, are set aside pursuant to law for the use of the United States under any (A) Act of Congress, (B) Executive order, (C) proclamation of the President, or (D) proclamation of the Governor of the Commonwealth of Puerto Rico, shall remain the property of the United States.

(c) Not later than five years after the date of admission of the Commonwealth of Puerto Rico as a State of the Union, each Federal agency having control over any land or property that is retained by the United States pursuant to this section shall submit a report to the President and the Congress concerning the continued need for such land or property. If the President determines that any such land or property, or portion thereof, or any interest therein, is no longer needed by the Federal Government, it shall be conveyed to the Commonwealth of Puerto Rico at no cost. This section does not authorize the transfer of any interest in the Caribbean National Forest or the San Juan National Historic Site.

(d) ALL LAWS OF THE UNITED STATES.—

(1) reserving to the United States the free use or enjoyment of property which vest in or is conveyed to the Commonwealth of Puerto Rico or its political subdivisions pursuant to this section; or

(2) reserving the right to alter, amend, or repeal laws relating to the ownership of such land; shall cease to be effective upon the conveyance of the land.

SEC. 205. CLAIMS TO FEDERAL LANDS AND PROPERTY.

(a) The Commonwealth and its people recognize all rights and titles to any lands or other property not granted or conferred to the Commonwealth or its political subdivisions by or under the authority of this Act, the right or title to which is now held by the United States or subject to disposition by the United States.

(b)(1) Nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by applicable laws of the United States.

(2) Nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any applicable law authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability of any law to any such claim shall be unaffected by anything in this Act.

(c) No taxes shall be imposed by the State upon any lands or other property now owned or hereafter acquired by the United States.

SEC. 206. ELECTIONS AND ADMISSION REFERENDUM.

(a)(1)(A) Not later than January 1 of the fourth calendar year following the calendar year in which the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation for the election of two United States Senators and for such number of United States Representatives in Congress as provided in this Act. Such proclamation shall provide that such elections shall occur on the first Tuesday in November of such fourth calendar year (or on another date during the autumn of such calendar year as may be provided by legislation enacted by the Commonwealth of Puerto Rico).

(B) The Governor of the Commonwealth of Puerto Rico shall certify the election of the Senators and Representatives in the manner required by law. The Senators and Representatives elected shall be entitled, upon the date of admission of the Commonwealth of Puerto Rico as a State of the Union, to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of the other States in the Congress of the United States. The Office of Resident Commissioner shall cease to exist upon the swearing in of the first Member of the House of Representatives so elected.

(2) In the first election of Senators from the State, the two senatorial offices shall be separately identified and designated, and no person may be a candidate for both offices. No such identification or designation of either of the two senatorial officers shall refer to or be taken to refer to the terms of such offices, or in any way impair the privilege of the Senate to determine the class to which each of the Senators elected shall be assigned.

(b)(1) Election returns shall be made and certified in such manner as provided by the electoral laws of Puerto Rico and in such a manner as the Commonwealth of Puerto Rico may prescribe. The Governor of the Commonwealth of Puerto Rico shall certify the results of such elections to the President of the United States.

(2) The new State of Puerto Rico shall be known as the Commonwealth of Puerto Rico.

(3) The individuals holding legislative, executive, and judicial offices of the Commonwealth of Puerto Rico shall continue to discharge the duties of their respective offices, pending the issuance of the proclamation by the President of the United States and the admission of the Commonwealth of Puerto Rico as a State of the Union. The officers elected or appointed under the provisions of the constitution and laws of the Commonwealth shall thereupon proceed to exercise all the functions pertaining to their offices in, under, or by authority of the government of the State, as provided by the constitution and laws of the State.

SEC. 207. CONGRESSIONAL REPRESENTATION.

The Commonwealth of Puerto Rico upon its admission into the Union, and until the next reapportionment, shall be entitled to such additional Representatives as would be provided based upon the 1990 census. The permanent membership of the House of Representatives as now prescribed by law, is hereby increased from four hundred and thirty-five to four hundred and thirty-five plus the number of additional

Representatives to which the Commonwealth of Puerto Rico is entitled.

SEC. 208. LAWS IN EFFECT.

(a) Upon admission of the Commonwealth of Puerto Rico into the Union, all of the local laws then in force in the Commonwealth of Puerto Rico shall be and continue in force and effect throughout the State, except as modified or changed by this Act, and shall be subject to repeal or amendment by the legislature of the Commonwealth. All of the laws of the United States shall have the same force and effect within the State as on the date immediately prior to the date of admission of the State of Puerto Rico, except as otherwise provided in section 213 or 214 or elsewhere in this Act, and except for any provisions of law which provide for grants or other assistance to States or other units of local government or individuals and for which the Commonwealth of Puerto Rico or residents thereof are either excluded or whose eligibility is less than that provided on a uniform basis to other States. Any regulatory or other provision of law, other than grants and other assistance, which does not apply to Puerto Rico solely on the basis of particular geography, especially if such provision does not also apply to either Alaska or Hawaii, shall continue to not apply unless specifically extended by Congress.

(b) Within sixty days of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, the President shall appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Commonwealth of Puerto Rico should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four of who will be residents of Puerto Rico who are and have been for at least five years domiciled continuously in Puerto Rico at the time of their appointments) who will be representative of the Federal, local, private and public interests in the applicability of laws of the United States to the Commonwealth of Puerto Rico. The Commission will make its final report by January 1, 1994, and before that time will make such interim reports and recommendations to the Congress as it considers appropriate. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions within the Commonwealth of Puerto Rico, the policies embodied in the law and the provisions and purposes of this title. The United States will bear the cost of the work of the Commission. There are hereby authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

SEC. 209. CONTINUATION OF SUITS.

(a) No writ, action, indictment, cause, or proceeding pending in any court of the Commonwealth of Puerto Rico, shall abate by reason of the admission to the Commonwealth of Puerto Rico into the Union, but shall proceed within such appropriate State courts as are now established under the Constitution of the Commonwealth, or shall continue in the United States District Court for the District of Puerto Rico, as the nature of the case may require.

(b) All civil causes of action and all criminal offenses, which shall have arisen or been committed prior to the admission of the Commonwealth, but as to which no writ, action, indictment, or proceeding shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Puerto Rico in like manner, to the same extent, and with like right of appellate review, as if such State had been created and such State courts had been established prior to the accrual of such causes of action or the commission of such offenses. The admission of the State shall effect no change in the procedural or substantive laws governing causes of action and criminal offenses which shall have arisen or been committed, and any such criminal offenses as shall have been committed against the laws of the Commonwealth of Puerto Rico, shall be tried and punished by the appropriate courts of the State, and any such criminal offenses as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Puerto Rico.

SEC. 210. APPEALS.

Parties shall have the same rights of judicial review of final decisions of the United States District Court for the District of Puerto Rico or the Supreme Court of the Commonwealth of Puerto Rico, in any case finally decided prior to the admission of the State of Puerto Rico into the Union, whether or not an appeal therefrom shall have been perfected prior to such admission. The United States Court of Appeals for the First Circuit and the Supreme Court of the United States, shall have the same jurisdiction in such cases as by law provided prior to the admission of the State into the Union. Any mandate issued subsequent to the admission of the State, shall be to the United States District Court for the District of Puerto Rico or a court of the State, as appropriate. Parties shall have the same rights of appeal from and appellate review of all orders, judgments, and decrees of the United States District Court for the District of Puerto Rico and of the Supreme Court of Puerto Rico, in any case pending at the time of admission of the State into the Union, and the Supreme Court of the Commonwealth of Puerto Rico and the Supreme Court of the United States shall have the same jurisdiction therein, as by law provided in any case arising subsequent to the admission of the State into the Union.

SEC. 211. MILITARY LANDS.

(a) Subject to subsection (b) and notwithstanding the admission of the Commonwealth of Puerto Rico into the Union, authority is reserved in the United States for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of the State, are controlled or owned by the United States and held for defense or Coast Guard purposes.

(b)(1) The Commonwealth of Puerto Rico shall always have the right to serve civil or criminal process within such tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the State but outside of such tracts or parcels of land.

(2) The reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over such lands shall not operate to prevent such lands from being a part of the Commonwealth of Puerto Rico, or to prevent the State from exercis-

ing over or upon such lands, concurrently with the Federal Government, any jurisdiction which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation or authority.

(3) The power of exclusive legislation shall vest and remain in the United States only so long as the particular tract or parcel of land involved is controlled or owned by the United States and used for defense or Coast Guard purposes, except that the United States shall continue to have sole and exclusive jurisdiction over such military installations as have been or may be determined to be critical areas as designated by the President of the United States or the Secretary of Defense.

SEC. 212. UNITED STATES NATIONALITY.

No provision of this title shall operate to confer United States nationality, to terminate nationality lawfully acquired, or to restore nationality terminated or lost under any law of the United States or under any treaty to which the United States is or was a party.

SEC. 213. ECONOMIC ADJUSTMENT.

The following subsections and the provisions of section 214 are enacted pursuant to Congress' power to admit new States, in recognition of the unique Federal tax provisions and programs affecting the Commonwealth of Puerto Rico which differ from those which applied to any other newly admitted State, and solely for the purposes of effecting a smooth and fair transition for the new State with a minimum of economic dislocation and to permit Federal agencies to assume or expand responsibilities for the administration and enforcement of Federal taxes and programs affecting the citizens residing in the new State:

(a) APPLICATION OF FEDERAL LAWS.—Effective upon the ratification under section 101(f) of the Puerto Rico Status Referendum Act, the heads of all Federal agencies are directed, as a priority matter, to examine the application of all programs within the jurisdiction of their respective agencies and, after consultation with the Governor of Puerto Rico, to recommend to the President, and to the Commission established under section 208(b), what changes, if any, and what additional administrative requirements, if any, will be needed to properly achieve the application of Federal laws in or to the new State with proper regard for the economic, and geographic circumstances of the new State.

(b) TRANSITION FOR CERTAIN ENTITLEMENTS.—(1) Except as otherwise provided in this subsection, effective on the date of admission of the State of Puerto Rico, all Federal programs which provide assistance to or on behalf of individuals, including, but not limited to Aid to Families with Dependent Children, Medicaid, Foster Care and Adoption Assistance, and the Social Services block grant, shall apply in the Commonwealth of Puerto Rico as they apply within the several States.

(2) Beginning on January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, amounts applicable under sections 1611(a)(1)(A) and 1611(b)(1) of the Social Security Act may not exceed 50 percent and under section 1611(a)(2)(A) and 1611(b)(2) of such Act may not exceed 75 percent of the per capita income of the State (as determined on the basis of the most recent reliable data available from the Secretary of Commerce) in which the applicant for or recipient of benefits under title XVI of such Act resides. An individual shall, regardless of legal residence, be considered to reside in a State for purposes of this paragraph for any month in which such individual is physically present in such State throughout the entire month. The Secretary of Health and Human Services (hereafter in this subsection referred to as the "Secretary") shall promulgate the amounts determined under this paragraph for the State at the same time and in the same manner as amounts are promulgated for cost-of-living adjustments in benefits under section 1617 of the Social Security Act.

(3)(A) Beginning on January 1 of the 2nd calendar year beginning after the date of the ratification under section

101(f) of the Puerto Rico Status Referendum Act, the Secretary shall implement the Supplemental Security Income for the Aged, Blind, and Disabled program as provided under title XVI of the Social Security Act in Puerto Rico. The benefit standards provided under sections 1611 (a) and (b) of the Social Security Act shall, after any reduction under the per capita limitation described in paragraph (2) be set at—

(i) 25 percent of the otherwise applicable level in such 2nd calendar year;

(ii) 50 percent of such level in the calendar year immediately following such 2nd calendar year; and

(iii) 75 percent of such level in the 2nd calendar year following such 2nd calendar year.

(B) The Secretary and the Government of Puerto Rico may enter into an agreement under which the implementation of the Supplemental Security Income program described in this paragraph in Puerto Rico will be deferred to a date later than January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act (but not later than the effective date of admission of the State of Puerto Rico). Any such agreement must provide that payment levels under the program of Aid to the Aged, Blind, and Disabled as in effect in Puerto Rico shall be based on the levels that would otherwise be in effect there under the Supplemental Security Income program and the Federal contribution to the cost of such payments shall not exceed what would have been the Federal costs under such Supplemental Security Income program.

(4)(A) Except as provided in this paragraph or in any agreement between the Government of Puerto Rico and the Secretary, the Medicaid program provided for under title XIX of the Social Security Act shall, prior to the effective date of admission of the State of Puerto Rico, continue to operate in Puerto Rico as it is operated on the date of the enactment of this Act.

(B) The Federal medical assistance percentage rate determined under section 1905(b) of the Social Security Act without regard to clause (2) of such section shall apply with respect to benefits paid under such program on or after January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(C) Section 1108(c) of the Social Security Act—

(i) shall be inapplicable to Puerto Rico on and after the date of admission of the State of Puerto Rico; and

(ii) shall apply to fiscal years ending after the 1st calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, and prior to the date described in clause (i), as though the amount set forth in paragraph (1)(C) thereof were increased by the applicable percentage of the excess of the amount that would be payable to Puerto Rico without regard to such section 1108(c) over $79,000,000.

For purposes of claims (ii), the applicable percentage is 25 percent for the 1st such fiscal year, 50 percent for the 2nd such fiscal year, and 75 percent for the 3rd such fiscal year.

(5) Prior to the effective date of admission of the State of Puerto Rico, the Aid to Families with Dependent Children program provided for under Part A of title IV of the Social Security Act shall continue to operate in Puerto Rico as it is operated on the date of the enactment of this Act, except that—

(A) the Federal matching rate for program expenditures after December of the 1st calendar year beginning after the date of the ratification under section 101(e) of the Puerto Rico Status Referendum Act shall equal the Federal medical assistance percentage rate determined under section 1905(b) of the Social Security Act without regard to clause (2) thereof, and

(B) the limitation on expenditures provided for under section 1108(a)(1) of the Social Security Act shall not apply with respect to such expenditures under such title.

(6) The Medicare Hospital Insurance Benefits for the Aged and Disabled program provided for under part A of title XVIII of the Social Security Act shall continue to operate in Puerto Rico as it is operated on the date of the enactment of this Act, except that the Prospective Payment Assessment Commission shall examine current levels of reimbursement under such part and advise the Secretary within 6 months of the date of the enactment of this Act as to whether the system in place on the date of the enactment of this Act accurately and appropriately reflects cost differentials between Puerto Rico and the States. If such study finds that the system in effect on the date of the enactment of this Act does not accurately reflect such cost differentials, the Secretary shall submit to the appropriate committees of Congress within 6 months of the date of completion of such study a legislative proposal to correct any deficiencies in the reimbursement system.

(7) The Secretary shall reduce the amounts otherwise payable to Puerto Rico under titles IV, XVI (as in effect before the date of the enactment of Public Law 92–603), and XIX of the Social Security Act with respect to expenditures under such titles for any fiscal year which ends after the end of the 1st calendar year beginning after the date of the ratification under section 101(e) of the Puerto Rico Status Referendum Act and prior to the date which is 4 calendar years

after the date of the admission of Puerto Rico as a State, to the extent that the sum of such amounts and any expenditures under the Supplemental Security Income program under title XVI of the Social Security Act with respect to residents of Puerto Rico exceeds the sum of $161,000,000 and any increase in Federal revenues by reason of section 214(d) of this Act. The Secretary of the Treasury shall make an annual determination of such amount and provide for appropriate adjustments in such amount as determined for prior years.

(c) NUTRITION ASSISTANCE AND FOOD STAMP PROGRAM.—

(1) INCREASED FUNDING LEVELS FOR THE NUTRITION ASSISTANCE PROGRAM IN PUERTO RICO.—Notwithstanding any other provision of law from the sums appropriated under the Food Stamp Act of 1977, the Secretary of Agriculture shall pay to the Commonwealth of Puerto Rico, in addition to the amounts required to be paid by the Secretary of the Commonwealth of Puerto Rico under subparagraph (A) of section 19(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2028(a)(1)(A)), the following additional sums for the years described—

(A) $112,500,000, for the fiscal year beginning on October 1 of the first calendar year after the date of the ratification of the "Statehood" status option by the people of Puerto Rico (hereinafter referred to in this subsection as the "first fiscal year after ratification");

(B) $250,000,000 for the fiscal year immediately following the first fiscal year after ratification; and

(C) $337,500,000 for the second fiscal year after the first fiscal year after ratification.

(2) FOOD STAMP PROGRAM.—Beginning on the first day of October prior to January 1 of the year Puerto Rico is declared admitted to the Union—

(A) Puerto Rico shall participate in the food stamp program under the Food Stamp Act of 1977 on equal footing with any other State of the United States; and

(B) the block grant program authorized under section 19 of such Act for Puerto Rico is terminated.

(3) AMENDMENTS TO THE FOOD STAMP ACT OF 1977.—Beginning on the first day of October prior to January 1 of the year Puerto Rico is declared admitted to the Union, section 19 of the Food Stamp Act of 1977 (7 U.S.C. 2028) is amended to read as follows:

"SEC. 19 (a). SPECIAL RULES.—Notwithstanding any other provision of this Act, any State whose per capita income is below 50 per centum of the national per capita income of the United States shall participate in the program under the requirements of this Act except as follows:

"(1) a household within any such State shall be ineligible to participate in the food stamp program (notwithstanding the provisions of section 5(c) of the Act) if such household's income, after the exclusions are made as provided for in section 5(d) of such Act and before the deductions in such income are made under section 5(e) of such Act, exceeds 65 per centum of the poverty line as defined in section 5(c)(1) of such Act;

"(2) the standard deduction for purposes of determining benefits in such State shall be 59 per centum of the standard deduction determined under section 5(e) of the Act for the forty-eight contiguous States and the District of Columbia; and

"(3) the maximum excess shelter expense deduction to which a household within the State may be entitled shall be 35 per centum of the maximum excess shelter expenses deduction determined for the forty-eight contiguous States and the District of Columbia under paragraph (2) of the fourth sentence of section 5(e) of the Food Stamp Act of 1977 for the household.

"(b) Any State whose per capita income is below 50 per centum of the national per capita income of the United States shall participate in the program under the requirements of this Act except that any such State must make benefits available through the use of intelligent benefit cards, other automated or electronic delivery system, or other benefit delivery system specifically designed to promote the integrity of the program in any such State."

(4) LEGAL RIGHT TO ADDITIONAL SUMS.—Unless otherwise provided through legislation providing Federal revenues, the Secretary of Treasury is required to pay to the Secretary of Agriculture all additional amounts for nutritional assistance required to be paid by the Secretary of Agriculture to the Commonwealth of Puerto Rico under the Puerto Rico Status Referendum Act and section 19 of the Food Stamp Act of 1977. The Commonwealth of Puerto Rico is legally entitled to receive from the Secretary of Agriculture such additional amounts.

SEC. 214. PROVISIONS RELATING TO TAXATION AND REVENUE TRANSFERS.

(A) GENERAL RULE.—Except as otherwise provided in this section—

(1) all Federal tax laws shall be applicable to the State of Puerto Rico on and after the date of its admis-

sion as a State of the Union in the same manner as applicable to all other States; and

(2) all Federal tax laws which are applicable to the Commonwealth of Puerto Rico before the date of the enactment of this Act shall continue to apply until such date of admission.

(b) TRANSITION PERIOD FOR APPLICATION OF INCOME TAXES.—

(1) Except as provided in paragraph (2), in the case of any taxable year in the transition period, the Federal income tax laws shall be applied—

(A) to all persons in the same manner as if the Commonwealth of Puerto Rico were a State, and

(B) without regard to section 933 of the Internal Revenue Code of 1986.

(2) The amount of any increase (or decrease) in any Federal income tax by reason of the application of paragraph (1) shall be equal to the applicable percentage of the amount by which such tax is greater (or less) than such tax computed without regard to this subsection.

(3) For purposes of this section—

(A) The applicable percentage with respect to any taxable year in the transition period shall be determined in accordance with the following table:

In the case of the following year in such period:	The applicable percentage is:
1st	25 percent
2nd	50 percent
3rd	75 percent
4th and succeeding	100 percent

(B) If, but for this subparagraph, the applicable percentage for the taxable year in the transition period which includes the date of admission of Puerto Rico as a State is less than 100 percent, the applicable percentage shall be treated as 100 percent with respect to the amount which bears the same ratio to the amount of the increase or decrease under paragraph (2)(A) (or the credit under paragraph (2)(B)) as—

(i) the number of months in the taxable year after the month preceding the month including such date, bears to

(ii) the total number of months in such taxable year.

(4) For purposes of this subsection, the term "transition period" means, with respect to any taxpayer, the period beginning with the taxpayer's 2nd taxable year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act and ending with the taxpayer's taxable

year which includes the date of admission of Puerto Rico as a State. For purposes of the preceding sentence, a taxpayer whose 1st taxable year begins after such ratification date shall be treated as if such taxpayer had such a taxable year (and subsequent taxable years) in effect on (and after) such date.

(5)(A) Paragraph (1) shall not apply to a corporation which is a FSC (as defined in section 922 of such Code) organized and operated under the laws applicable to the Commonwealth of Puerto Rico.

(B) Notwithstanding paragraph (1), if any portion of the foreign source income of a Puerto Rican corporation is not subject to United States tax by reason of paragraph (2) such corporation shall be treated as a foreign corporation for purposes of applying the antideferral provisions to such portion.

(C) For purposes of subparagraph (B), the term "antideferral provisions" means subchapter G, subpart F of part III of subchapter N, and part VI of subchapter P of chapter 1 of such Code.

(c) EMPLOYMENT, EXCISE, AND ESTATE AND GIFT TAXES.—

(1) Except as provided in paragraph (3), and notwithstanding any other provision of law, in the case of any calendar year during the transition period, the fol-

lowing taxes shall be imposed in the manner as if the Commonwealth of Puerto Rico were a State:

(A) Chapter 24 of the Internal Revenue Code of 1986 (relating to income tax collected at source).

(B) Any excise tax imposed under the Internal Revenue Code of 1986 other than sections 3111 and 3301 of such Code.

(2) In the case of any transfer of property after September 27, 1990, and before the date of admission of Puerto Rico as a State by a donor if section 2501(c) of the Internal Revenue Code of 1986 applies by reason of being a resident of Puerto Rico—

(A) if such donor dies on or after such date of admission, the value of such property shall be included in the donor's gross estate if the donor or the donor's spouse retains directly or indirectly any beneficial interest in such property as of the date of death or disposes of such interest within three years before such date of death, and

(B) for purposes of applying subtitle B of such Code to any transfer, or to the estate of any decedent dying, after such date of admission, such transfer of property shall be taken into account in computing taxable gifts and adjusted taxable gifts.

(3)(A) A tax imposed under paragraph (1) shall be equal to the applicable percentage of such tax determined without regard to this paragraph.

(B) For purposes of this paragraph, the applicable percentage for any calendar year in the transition period shall be determined in accordance with the following table:

In the case of the following year in such period:	The applicable percentage is:
1st year	25 percent
2nd year	50 percent
3rd year	75 percent
4th year	100 percent

(4) For purposes of this subsection, the term "transition period" means the four-calendar year period beginning with the second calendar year following the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

(5) Paragraph (1)(B) shall not apply to any article to which section 7652 of the Internal Revenue Code of 1986 applies.

(6)(A) In the case of any article which is held for sale in Puerto Rico on January 1 of the first, second, third, or fourth calendar year of the transition period, and which on such date is beyond the point at which tax would otherwise be imposed under the relevant provision of the Internal Revenue Code of 1986, there is hereby imposed a tax equal to the excess of—

(i) the Federal excise tax which would be imposed under the Internal Revenue Code of 1986 if such tax were imposed on such date, over

(ii) the amount of such tax if such tax were imposed on January 1 of the preceding calendar year.

(B) The person holding an article on which tax is imposed under subparagraph (A) shall be liable for payment of such tax, and such tax shall be due and payable on February fifteen of the calendar year in which imposed in the same manner as the excise tax which would have been imposed under the relevant provision of the Internal Revenue Code of 1986 on a similar article.

(d) TRANSITION PERIOD FOR SECTION 936 CREDIT.—

(1) In the case of a taxable year in the transition period, the credit under section 936 of the Internal Revenue Code of 1986—

(A) shall be allowable to a taxpayer only if such taxpayer (or a predecessor) elected the application of such section for its taxable year which included the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, and (B) shall be equal to the applicable percentage of the lesser of—

(i) the amount of such credit determined without regard to this subsection, or

(ii) 130 percent of the average amount of such credit of the taxpayer and its predecessors for the three-taxable year period ending with the taxpayer's last taxable year ending before August 1, 1990 (not taking into account years in which the taxpayer or its predecessor was not in existence). If neither the taxpayer nor any predecessor has a taxable year ending before August 1, 1990, the amount under clause (ii) shall be treated as being equal to the amount of such credit of the taxpayer for its 1st taxable year ending on or after August 1, 1990 (adjusted as provided by the Secretary in the case of a short taxable year).

(2)(A) For purposes of this subsection, the applicable percentage for any taxable year in the transition period shall be determined in accordance with the following table:

In the case of the following year in such period:	The applicable percentage is:
1st taxable year	75 percent
2nd taxable year	50 percent

3rd taxable year	25 percent
4th and following taxable year	0 percent

(B) For purposes of this paragraph, a rule similar to the rule contained in subsection (b)(3)(B) shall apply.

(3) For purposes of this subsection, the term "transition period" has the meaning given such term by subsection (b)(4).

(e) COVER OVER OF TAXES.—

(1)(A) Except as provided in subparagraph (B), all income and excise taxes collected under the internal revenue laws of the United States by reason of subsections (b) and (c) allocable to each fiscal year (or portion thereof) preceding the date of admission of Puerto Rico as a State shall be covered into the treasury of Puerto Rico.

(B) The provisions of section 7652 of the Internal Revenue Code of 1986 shall continue to apply before the date of admission of Puerto Rico as a State and shall cease to apply on and after such date.

(2)(A) Taxes collected under the internal revenue laws of the United States by reason of subsection (d) allocable to each fiscal year (or the portion thereof) preceding the date of admission of Puerto Rico as a State shall be covered into the treasury of Puerto Rico to the extent that the amount of such taxes exceeds the applicable excess expenditures of the United States allocable to such portion of the fiscal year.

(B) For purposes of subparagraph (A), the term "applicable excess expenditures" means the excess (if any) of—

(i) the amount of expenditures by the United States—

(I) with respect to the operation in Puerto Rico (or for residents thereof) of the programs established by parts A and E of title IV, title XVI (as added by Public Law 92-603), title XVI (as in effect before the date of the enactment of Public Law 92-603), and title XIX of the Social Security Act, and

(II) with respect to credits under section 32 of such Code in excess of tax liability allowable to residents of Puerto Rico, over

(ii) the amount of the expenditures described in clause (i) which would have been made without regard to the provisions of this Act.

(f) RESERVATION; REGULATIONS.—

(1) Congress explicitly reserves authority to enact appropriate transitional rules to implement the provisions of this section.

(2) The Secretary of the Treasury is authorized to promulgate such rules and regulations as are necessary or appropriate to carry out the purposes of this section and to implement the transition to statehood.

SEC. 215. AMENDMENTS TO TRADE LAWS.

(a) ELIMINATION OF SEPARATE DUTIES.—

(1) Notwithstanding any other provision of law, no additional duties may be imposed by the Legislature of Puerto Rico after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(2) Beginning on the first day of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, any duties imposed by the Legislature of Puerto Rico that are in effect on the date of such ratification shall be reduced by an amount equal to the applicable percentage of such duties in accordance with the following table:

In the case of the following calendar year after ratification:	The applicable percentage is:
2nd	25 percent
3rd	50 percent
4th	75 percent
5th and following	100 percent

(3) Section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) is repealed effective January 1 of the 5th calendar year following the calendar year in which the

date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

(4) The Act of June 18, 1934 (48 Stat. 1017, chapter 604; 19 U.S.C. 1319a) is repealed effective January 1 of the 5th calendar year following the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

(5) Any Act ratifying an Act of the Legislature of Puerto Rico which imposes tariffs or duties on articles imported into Puerto Rico is repealed effective January 1 of the 5th calendar year following the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

(b) CARIBBEAN BASIN INITIATIVE.—

(1) Section 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) is amended—

(A) by striking "the Commonwealth of Puerto Rico and" in the flush paragraph at the end of paragraph (1),

(B) by striking "(other than the Commonwealth of Puerto Rico)" in the flush paragraph at the end of paragraph (1), and

(C) by striking paragraphs (4) and (5).

(2) Section 214(c) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 note) is amended—

(A) by striking "the treasuries of Puerto Rico or" and inserting "the treasury of", and

(B) by striking "produced in Puerto Rico or" and inserting "produced in".

(3) Section 214 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 1319 note) is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(4) The amendments made by this subsection shall take effect on January 1 of the 5th calendar year following the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

(c) CONFORMING AMENDMENTS.—

(1) Section 504 of the Trade Act of 1974 (19 U.S.C. 2464) is amended by striking subsection (e) and redesignating subsection (f) as subsection (e).

(2) Section 4 of the Act of April 12, 1900 (commonly known as the "Foraker Act"; 31 Stat. 77, chapter 191; 48 U.S.C. 740) is repealed.

(3) The amendments made by this subsection shall take effect on January 1 of the 5th calendar year fol-

lowing the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

TITLE III—INDEPENDENCE

SEC. 301. CONSTITUTIONAL CONVENTION.

(a) Should independence be ratified pursuant to section 101(f) of the Puerto Rico Status Referendum Act, then the Legislative Assembly of the Commonwealth of Puerto Rico shall provide, within two months, for the election of delegates to a Constitutional Convention to serve until the proclamation of independence and to draft a Constitution for the Republic of Puerto Rico. The election of delegates must be held within six months after such ratification.

(b) Those qualified to vote in the election of delegates to the Constitutional Convention shall be (1) All persons born and residing in Puerto Rico; (2) all persons residing in Puerto Rico and one of whose parents was born in Puerto Rico; (3) all persons who at the time of the adoption of this Act shall have resided in Puerto Rico for a period of twenty years or more; (4) all persons who established their residence in Puerto Rico prior to attaining voting age and still reside in Puerto Rico; and (5) spouses of all persons included in (1), (2), (3), and (4) above.

(c) The laws of the Commonwealth of Puerto Rico relating to additional voter qualifications and the electoral process shall apply to this election.

(d) The Constitutional Convention shall meet within three months of the election of delegates at such time and place as the Legislative Assembly of the Commonwealth of Puerto Rico shall determine.

(e) The Constitutional Convention shall exercise jurisdiction over all of the territory of Puerto Rico ceded to the United States by Spain by virtue of the Treaty of Paris the tenth day of December 1898.

SEC. 302. CHARACTER OF THE CONSTITUTION.

(a) The Constitutional Convention mandated under the previous section shall formulate and draft a constitution establishing a republican form of government which shall guarantee the protection of fundamental human rights.

(b) The fundamental human rights guaranteed by the aforementioned constitution shall include such rights as due process and equal protection under the law, freedom of speech, press, assembly, association, and religion, as well as the rights of the accused, and economic, social, and cultural rights such as the right to education, adequate nutrition, health services, adequate housing, and work or employment and the right to own private property and to just compensation for the taking thereof.

(c) The property rights of the United States and Puerto Rico shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of Puerto Rico.

SEC. 303. RATIFICATION OF THE CONSTITUTION.

(a) The Constitution adopted by the Constitutional Convention shall be submitted to the people of Puerto Rico for its ratification or rejection.

(b) The Legislative Assembly of the Commonwealth of Puerto Rico shall call for a special election for such ratification or rejection, to be held within three months of the adoption of the Constitution by the Constitutional Convention.

(c) The special election providing all qualified voters the opportunity to cast a vote for or against the proposed Constitution shall be held in the manner prescribed by the Legislative Assembly of the Commonwealth of Puerto Rico. In the event such Constitution is not approved in the election, it shall be resubmitted to the convention for further consideration and resubmission to the voters as provided in this section.

(d) Those qualified to vote in this election shall be those possessing the qualifications established in section 301 of this title.

SEC. 304. ELECTION OF OFFICERS OF THE REPUBLIC.

(a) Within thirty days of the ratification of the Constitution as provided for by section 303 of this title, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation calling for the election of such officers of the Republic of Puerto Rico as may be required by the ratified Constitution.

(b) The election of officers of the Republic shall be held not later than six months after the date of ratification of the Constitution.

(c) The aforesaid election shall be held in accordance with the procedures and requirements established in the Constitution of the Republic of Puerto Rico.

(d) The Governor of the Commonwealth of Puerto Rico shall certify the results of the election to the President of the United States.

SEC. 305. JOINT TRANSITION COMMISSION.

(a) A Joint Transition Commission shall be appointed in equal numbers by the President of the United States and the Presiding Officer of the Constitutional Convention of Puerto Rico.

(b) The Joint Transition Commission shall be responsible for expediting the orderly transfer of all functions currently exercised by the Government of the United States in Puerto Rico, or in relation to Puerto Rico; including the recommendation of appropriate legislation to the appropriate officials of each government.

(c) Any necessary task forces established by the Joint Transition Commission shall be constituted in the same manner as the Commission.

(d) The Government of the Commonwealth of Puerto Rico and the agencies of the Government of the United States shall cooperate with the Joint Transition Commission and subsequently with the new officers of the Republic of Puerto Rico, to provide for the orderly transfer of the functions of government.

(e) The costs of the Transition Commission shall be evenly divided between the United States and Puerto Rico, and there is hereby authorized to be appropriated such sums as are necessary for the United States share of these costs. Agencies of the United States Government shall provide technical assistance to the Joint Transition Commission on a reimbursable basis.

SEC. 306. RESOLUTION OF CONTROVERSIES PRIOR TO INDEPENDENCE.

Except as provided in title I of this Act and beginning on the date of the ratification provided for in title I of this Act, and until the date of proclamation of independence, any action arising from this title filed in courts of the United States shall be stayed and referred to the Joint Transition Commission for resolution within a reasonable period of time.

SEC. 307. PROCLAMATIONS BY THE PRESIDENT OF THE UNITED STATES AND THE HEAD OF STATE OF THE REPUBLIC OF PUERTO RICO.

(a) Not later than one month after the official certification of the elected officers of the Republic of Puerto Rico under section 304, and the approval, in accordance with the constitutional processes of Puerto Rico and the United States, of the agreements set forth in sections 312 and 313, the President of the United States shall by proclamation withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty then existing and exercised by the United States over the territory and people of Puerto Rico, and shall furthermore recognize on behalf of the United States of America the independence of the Republic of Puerto Rico and the authority of the government instituted by the people of Puerto Rico under the Constitution of their own adoption. The proclamation shall state that the effective date of withdrawal of the sovereignty of the United States and the recognition of independence shall be the same as the date of the proclamation of independence as provided in subsection (d).

(b) The President of the United States shall forward a copy of the proclamation issued by him to the presiding officer of the Constitutional Convention of Puerto Rico within a week after signature.

(c) Within one week after receiving the Presidential proclamation and with the advice of the officer elected as head of state of the Republic, the presiding officer of the Constitutional Convention shall determine the date in which the Government of the Republic shall take office, and shall so notify the Governor of the Commonwealth of Puerto Rico and the President of the United States.

(d) Upon taking office, the head of state of the Republic of Puerto Rico shall immediately issue a proclamation declaring (1) that Puerto Rio has become a sovereign, independent nation; (2) that the Constitution of the Republic is thenceforth in effect; (3) that the Commonwealth of Puerto Rico and its Government have ceased to exist; and (4) that the Government of the Republic will henceforth exercise its powers and duties under its Constitution.

SEC. 308. EFFECTS OF THE PROCLAMATION OF INDEPENDENCE ON LEGAL AND CONTSTITUIONAL PROVISIONS.

(a) Upon the proclamation of independence as provided in section 307, and except as otherwise provided in this title or in any separate agreements hereinafter concluded between the United States and the Republic of Puerto Rico—

(1) all property, rights, and interests which the United States may have acquired over Puerto Rico by virtue of the Treaty of Paris of 1898, and thereafter by

cession, purchase, or eminent domain, with the exception of such land and other property, rights, or interests as may have been sold or otherwise legally disposed of prior to the enactment of this Act, shall vest in the Republic of Puerto Rico;

(2) all laws of the United States applicable to the Commonwealth of Puerto Rico immediately prior to the proclamation of independence shall no longer apply in the Republic of Puerto Rico; and

(3) all laws and regulations of the Commonwealth of Puerto Rico in force immediately before the proclamation of independence shall continue in force and shall be read with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution of the Republic of Puerto Rico until such time as they shall be replaced with new legislation, except any provisions that may be incompatible with the sovereignty of the Republic of Puerto Rico shall be deemed invalid.

SEC. 309. EFFECTS OF THE PROCLAMATION OF INDEPENDENCE ON JUDICIAL PRONOUNCEMENTS.

Unless otherwise agreed by the Governments of United States and Puerto Rico in accordance with their respective constitutional processes:

(1) The Republic of Puerto Rico shall recognize and give effect to all orders and judgments rendered by United States or Commonwealth courts prior to the proclamation of independence pursuant to the laws of the United States then applicable to the Commonwealth of Puerto Rico.

(2) All judicial proceedings pending in the courts of the Commonwealth of Puerto Rico prior to the proclamation of independence shall be continued in the corresponding courts under the Constitution of the Republic of Puerto Rico.

(3) Upon the proclamation of independence, the judicial power of the United States shall no longer extend to Puerto Rico. All proceedings pending in the United States District Court for the District of Puerto Rico shall be transferred to the corresponding Puerto Rican courts of competence under the Constitution of the Republic of Puerto Rico for disposition in conformity with laws applicable at the time when the controversy in process arose. All proceedings pending in the United States Court of Appeals for the First Circuit, or in the Supreme Court of the United States, which may have initiated in the courts of the Commonwealth or in the United States District Court for the District of Puerto Rico shall continue until their final disposition

and shall be submitted to the competent authority of the Republic of Puerto Rico for proper execution, unless either the United States or any of its officers is a party, in which case any final judgment shall be properly executed by the competent authority of the United States.

SEC. 310. STATE SUCCESSION.

(a) The Government of the Republic of Puerto Rico shall be deemed successor to the Government of the Commonwealth of Puerto Rico and of all the rights and obligations thereof.

(b) Upon proclamation of independence the President of the United States shall notify the governments with which the United States is in diplomatic correspondence, to the United Nations Organization, and to the Organization of American States, that—

(1) the United States has recognized the independence of the Republic of Puerto Rico; and

(2) all obligations and responsibilities of the Government of the United States which arise from any valid bilateral or multilateral international instruments affecting Puerto Rico, insofar as said instruments may be held to have consequences for the United States because of their application to or in respect to Puerto Rico, shall cease, except that such obligations and re-

sponsibilities may be assumed by the Government of the Republic of Puerto Rico in a manner to be determined and proclaimed by the appropriate officer of the Republic of Puerto Rico in accordance with its Constitution.

SEC. 311. CITIZENSHIP AND MIGRATION.

(a) All matters pertaining to Puerto Rican citizenship shall be regulated pursuant to the Constitution and laws of the Republic of Puerto Rico.

(b) Upon the ratification under section 101(f) of the Puerto Rico Status Referendum Act, Puerto Rico shall no longer be deemed to be a part of the United States for the purposes of acquiring citizenship of the United States. Provisions of the Puerto Rican Federal Relations Act (commonly known as the "Jones Act", 48 U.S.C. 731 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) declaring Puerto Rico to be a part of the United States for the purpose of extending citizenship to persons born in Puerto Rico are repealed or modified, as appropriate, to delete any reference to Puerto Rico and Puerto Rico shall not be considered to be a part of the United States for such purposes, except that nothing in this section shall affect the citizenship of any person born prior to the date of the ratification.

(c) Notwithstanding any other provision of law, no person born outside of the United States after the ratification under section 101(f) of the Puerto Rico Status Referendum Act shall be a citizen of the United States at birth if a parent or the parents of such person acquired United States citizenship solely by virtue of birth in Puerto Rico pursuant to the provisions of the Puerto Rican Federal Relations Act (commonly known as the "Jones Act", 48 U.S.C. 731 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) and whose principal residence, as defined under section 101(a)(33) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(33)), continued to be Puerto Rico on or after the Proclamation of Independence, unless the parent or parents at the time of the birth of such person is a citizen of the United States employed by the Government of the United States.

(d) Entry into the United States and lawfully engaging in occupations or establishing residence as immigrants in the United States for any person who is not a citizen of the United States and becomes a citizen of the Republic of Puerto Rico upon the Proclamation of Independence, or who becomes a citizen of the Republic by birth after the Proclamation of Independence, or who is a naturalized citizen of the Republic who has been an actual resident of Puerto Rico for not less than five years, shall be permitted only as may be provided by law and regulation of the United States: *Provided*, That persons identified under subsection (c) above, may enter the United States and its territories and possessions as nonimmigrants for a period of twenty-five years after such Proclamation of Independence without regard to paragraphs (14), (20), and (26)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a) (14), (20), and (26)(B): *Provided further,* That this subsection does not confer on such citizen of Puerto Rico the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under such Act. This subsection, however, shall not prevent a citizen of Puerto Rico from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

SEC. 312. DEFENSE.

Specific arrangements for the use of military areas by the United States in Puerto Rico shall be negotiated by a task force established by the Joint Transition Commission, and approved in accordance with the constitutional processes of the United States and Puerto Rico, and shall come into effect simultaneously with the proclamation of independence. These specific arrangements shall include an agreement by the Government of Puerto Rico to deny to third countries any access to or use of the territory of Puerto Rico for military purposes. Consent by the United States to any alteration, modification, amendment, limitation, termination, or other change in such agreement regarding denial shall occur only pursuant to a specific Act of Congress.

SEC. 313. FEDERAL PROGRAMS.

The following subsections and the provisions of this title are enacted in recognition of the unique relationship between the United States and Puerto Rico, to affect a smooth and fair transition for the new Republic of Puerto Rico with a minimum of economic disruption, and to promote the development of a viable economy in the new Republic of Puerto Rico.

(a) All Federal programs shall continue to apply in Puerto Rico until the end of the fiscal year in which independence is proclaimed, at which time, a grant shall be paid to the Republic of Puerto Rico pursuant to subsection (3).

(b) Specific arrangements for the continuation or phase-out of Federal programs shall be negotiated by a Task Force on Economic Assistance established by the Joint Transition Commission and approved in accordance with the constitutional processes of Puerto Rico and the United States, and shall come into effect simultaneously with the proclamation of independence. In general, the specific arrangements shall provide that—

(1) all Federal pension programs, such as veterans and civil service benefits, shall continue as provided by United States law;

(2) prior to the end of the fiscal year in which independence is proclaimed, an estimate will be determined by the Comptroller General of the United States of the total value of grants, programs, and services, including Medicare, provided by the Federal Government in Puerto Rico in such fiscal year, except for those grants, programs, and services which will otherwise continue under this Act;

(3) a grant equal to the value established under paragraph (2) shall be paid annually to the Republic of Puerto Rico beginning in the fiscal year following the year in which independence is proclaimed, through the ninth year following the ratification under section 101(f) of the Puerto Rico Status Referendum Act;

(4) the United States will fulfill any contractual obligations outstanding at the time of the proclamation of independence; and

(5) Puerto Rico may request that the United States renew or continue any existing contractual obligations: Provided that Puerto Rico agrees that the cost of such renewal or continuation shall be deducted from the annual grant made under paragraph (3).

(c) There are authorized to be appropriated such sums as may be necessary to fulfill the purposes of this section.

SEC. 314. SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE.

(a) The Joint Transition Commission established under section 305 of this Act shall establish a Task Force on Social Security to negotiate agreements necessary for the coordination of the social security system of the United States established by title II of the Social Security Act with a similar system to be established in the new Republic of Puerto Rico. Such agreements shall protect the benefit rights of all individuals who have attained benefit eligibility under such title as of 5 calendar years subsequent to the ratification under section 101(f) of the Puerto Rico Status Referendum Act shall provide appropriate credit for others who have contributed to such system. Any such agreement shall be approved in accordance with the constitutional processes of Puerto Rico and the United States.

(b) In order to provide adequate time for the negotiation and implementation of the agreements provided for in (a), the provisions of the Old Age, Survivors, and Disability Insurance programs under title II of the Social Security Act and the related provisions of chapters 2 and 21 of the Internal Revenue Code of 1986 shall apply until the end of the 5th calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(c) Except as otherwise provided in this section, all programs operated under the Social Security Act shall cease to apply in Puerto Rico at the end of the fiscal year in which independence is proclaimed.

(d) Notwithstanding any other provision of law, on December 31 of the year in which a proclamation of independence is issued under section 307(d) of this Act—

(1) any amounts remaining in the Unemployment Trust Fund which are allocable to Puerto Rico shall be transferred to the Republic of Puerto Rico; and

(2) the Republic of Puerto Rico shall cease to be treated as a State for purposes of chapter 23 of the Internal Revenue Code of 1986, titles III, IX, and XII of the Social Security Act, the Federal-State Extended Unemployment Compensation Act of 1970, and any similar law of the United States relating to unemployment taxes or benefits.

(e) Any person who is a citizen of the United States (as described in section 316(c) of this Act, without regard to clauses (i) and (ii) of subparagraph (B)) shall not be treated as an employee for purposes of any law described in subsection (d)(2).

SEC. 315. TRADE RELATIONS.

(a) It is the sense of the Congress that—

(1) the United States should continue to maintain an open trading relationship with the Republic of Puerto Rico after a proclamation of independence is under this title, and

(2) the President should—

(A) seek to obtain favorable treatment from other countries for exports from Puerto Rico, and

(B) encourage other countries to maintain open trading relationships with Puerto Rico and to designate Puerto Rico as a beneficiary under any preferential trade arrangements such other countries maintain.

(b) The Joint Transition Commission shall establish a Task Force on Trade to consider and develop the manner in which trade between the United States and the Republic of Puerto Rico will be governed following the Proclamation of Independence. The Task Force on Trade shall submit a report on its deliberations, along with its recommendations, to the President, the Committee on Finance of the United States Senate, and the Committee on Ways and Means of the House Representatives.

(c) Beginning on the date of the issuance of the proclamation of independence under section 307(d) of this Act, the applicable rate of duty of the general subcolumn of column 1 of the Harmonized Tariff Schedule of the United States shall apply to products of the Republic of Puerto Rico entered or withdrawn from warehouse on or after such date.

(d)(1) Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended by inserting in alphabetical sequence "Puerto Rico, the Republic of".

(2)(A) Section 213(a) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)) is amended—

(i) by striking "Commonwealth of Puerto Rico" in the flush paragraph at the end of paragraph (1),

(ii) by striking "(other than the Commonwealth of Puerto Rico)" in this flush paragraph at the end of paragraph (1), and

(iii) by striking paragraphs (4) and (5).

(B) Section 214(c) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 note) is amended)—

(i) by striking "the treasuries of Puerto Rico or" and inserting "the treasury of", and

(ii) by striking "produced in Puerto Rico or" and inserting "produced in".

(C) Section 214 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 1319 note) is amended by striking subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(3) The amendments made by this subsection shall take effect on the date the proclamation of independence is issued under section 307(d) of this Act.

(e)(1) During the 5-year period beginning on the date the proclamation of independence is issued under section 307(d) of this Act, the President may enter into a trade agreement with the Republic of Puerto Rico that provides for the reduction or elimination of any duty imposed by the United States, the elimination of any other barriers, and the establishment of a free trade area between Puerto Rico and the United States.

(2) A trade agreement entered into under this subsection shall be reciprocal and shall provide for mutual reductions in trade barriers to promote trade, economic growth, and employment.

(3) Before the President enters into any trade agreement under this subsection, the President shall consult with—

(A) the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate; and

(B) each other committee of the House and the Senate, and each joint committee of the Congress, which has jurisdiction over legislation involving subject matters which would be affected by the trade agreement.

(4) The consultation under paragraph (4) shall include—

(A) the nature of the agreement;

(B) how and to what extent the agreement will achieve the applicable purposes, policies, and objectives of section 1101 of the Omnibus Trade and Competitiveness Act of 1988; and

(C) all matters relating to the implementation of the agreement under subsection (f).

(f)(1) Any agreement entered into under subsection (e) shall enter into force with respect to the United States if (and only if)—

(A) the President, at least 90 calendar days before the day on which he enters into the trade agreement, notifies the House of Representatives and the Senate of his intention to enter into the agreement, and promptly thereafter publishes notice of such intention in the Federal Register,

(B) after entering into the agreement, the President submits a document to the House of Representatives and the Senate containing a copy of the final legal text of the agreement, together with—

(i) a draft of an implementing bill,

(ii) a statement of any administrative action proposed to implement the trade agreement, and

(iii) the supporting information described in paragraph (2); and

(C) the implementing bill is enacted into law.

(2) The supporting information required under paragraph (1)(B)(iii) consists of—

(A) an explanation as to how the implementing bill and proposed administrative action will change or affect existing law; and

(B) a statement—

(i) asserting that the agreement makes progress in achieving the applicable purposes, policies, and objectives of section 1101 of the Omnibus Trade and Competitiveness Act of 1988, and

(ii) setting forth the reasons of the President regarding—

(I) how and to what extent the agreement makes progress in achieving the applicable purposes, policies, and objectives referred to in clause (i), and why and to what extent the agreement does not achieve other applicable purposes, policies, and objectives,

(II) how the agreement serves the interests of United States commerce, and

(III) why the implementing bill and proposed administrative action is required or appropriate to carry out the agreement.

(g) The provisions of section 151 of the Trade Act of 1974 (19 U.S.C. 2191) shall apply to any draft of a bill implementing a trade agreement entered into under subsection (e).

(h) Each period of time described in subsection (f) shall be computed without regard to—

(1) the days on which either House of the Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(2) any Saturday and Sunday, not excluded under paragraph (1), when either House of the Congress is not in session.

SEC. 316. TAXATION.

(a) Except as provided in this section, the Republic of Puerto Rico shall, on and after the date of proclamation of independence under section 307, be treated for purposes of the internal revenue laws of the United States as a foreign country.

(b)(1) In the case of a taxable year in the transition period, the credit under section 936 of the Internal Revenue Code of 1986—

(A) shall be allowable to a taxpayer only if such taxpayer (or a predecessor) elected the application of such section for its taxable year which included the date of the ratification under section 101(e) of the Puerto Rico Status Referendum Act, and

(B) shall be equal to the applicable percentage of the lesser of—

(i) the amount of such credit determined without regard to this subsection, or

(ii) 130 percent of the average amount of such credit of the taxpayer and its predecessors for the three-taxable year period ending with the taxpayer's last taxable year ending before August 1, 1990 (not taking into account years in which the taxpayer or any predecessor was not in existence).

If neither the taxpayer nor any predecessor has a taxable year ending before August 1, 1990, the amount under clause (ii) shall be treated as being equal to the amount of such credit of the taxpayer for its first taxable year ending on or after August 1, 1990 (adjusted as provided by the Secretary in the case of a short taxable year).

(2) For purposes of this subsection, the applicable percentage for any taxable year in the transition period shall be determined in accordance with the following table:

In the case of the following year in such period:	The applicable percentage is:
1st txable year	75 percent
2nd taxable year	50 percent
3rd taxable year	25 percent
4th and following taxable year	0 percent

(3) For purposes of this subsection, the term "transition period" means, with respect to any taxpayer, the period beginning with the taxpayer's second taxable year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(c)(1) In the case of taxable years ending on or after the date of proclamation of independence under section 307, section 933 of the Internal Revenue Code of 1986 shall continue to apply, but only with respect to bona fide residents of Puerto Rico—

(A) who are citizens of the United States under the provisions of the Puerto Rican Federal Relations Act (commonly known as the "Jones Act", 48 U.S.C. 731 et seq.) and the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) solely by reason of—

(i) being born in Puerto Rico,

(ii) being a child of parents who are citizens of the United States under such Acts solely by reason of being born in Puerto Rico, or

(iii) being described in both clause (i) and clause (ii), and

(B) who, during such taxable year, have neither—

(i) earned income (as defined in section 911(d)(2) of such Code) in excess of the maximum amount of foreign earned income which may be excluded for such taxable year under section 911 of such Code, nor

(ii) income other than earned income (as so defined) in excess of the sum of such individual's standard deduction and the deductions for personal exemptions allowable under such Code to such individual for such taxable year.

(2) If an individual described in paragraph (1) of this subsection is married to an individual not described in such paragraph, paragraph (1) shall apply to the individual described in such paragraph only if such individuals file separate income tax returns.

(d)(1) In the case of calendar years beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, notwithstanding section 7652 of the Internal Revenue Code of 1986 and section 4 of the Act of April 12, 1900 (31 Stat. 78), the amount of taxes and customs duties covered into the treasury of Puerto Rico under such sections shall be equal to the applicable percentage of such taxes and customs duties.

(2) For purposes of paragraph (1), the applicable percentage shall be determined in accordance with the following table:

In the case of the:	The applicable percentage is:
1st year	80 percent
2nd year	60 percent
3rd year	40 percent
4th year	20 percent
5th and following years	0 percent

(e)(1) Except as provided in paragraph (2), for any calendar year beginning after the date of the ratification under section 101(e) of the Puerto Rico Status Referendum Act—

(A) clause (i) of section 42(h)(3)(C) of the Internal Revenue Code of 1986 shall not apply with respect to Puerto Rico, and

(B) section 42(h)(4) of such Code shall not apply to any building placed in service in Puerto Rico after the calendar year in which such date occurs.

(2) For purposes of paragraph (1)(B), a building shall be treated as placed in service before the first calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act if—

(A) the bonds with respect to such building are issued before such first calendar year,

(B) the taxpayer's basis in the project (of which the building is a part), as of the close of the calendar year in which such date occurs, is more than 10 percent of the estimated project costs, and

(C) such building is placed in service before the beginning of the third calendar year beginning after such date.

(f) Section 103(a) of the Internal Revenue Code of 1986 shall continue to apply to bonds issued by Puerto Rico or any political subdivision on or before (but not after) the last day of the fifth calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(g) In the case of any transfer of property after September 27, 1990, and before the date of proclamation of independence under section 307 by a donor to whom section 2501(c) of the Internal Revenue Code of 1986 applies by reason of being a resident of Puerto Rico—

(1) if such donor dies on or after such date of proclamation of independence, the value of such property shall be included in the donor's gross estate if the donor or the donor's spouse retains directly or indirectly any beneficial interest in such property as of the date of death or disposes of such interest within three years before such date of death, and

(2) for purposes of applying subtitle B of such Code to any transfer, or to the estate of any decedent

dying, after such date of proclamation of independence, such transfer of property shall be taken into account in computing taxable gifts and adjusted taxable gifts.

SEC. 317. CURRENCY AND FINANCE.

(a) The Joint Transition Commission established under section 305 shall establish a Task Force on Currency and Finance to negotiate an agreement to assist the Republic of Puerto Rico in the design and establishment of a deposit insurance system, to determine the extent of financial support to be provided for the system by United States insurance organizations in which Puerto Rico's financial institutions currently participate, and to make the necessary arrangements with respect to the use of United States currency by the Republic of Puerto Rico if so requested by the Republic. Any such agreement shall be approved in accordance with the constitutional processes of Puerto Rico and the United States.

(b) The guarantees provided by the Government of the United States to investors in the secondary market for existing loans, particularly mortgage loans guaranteed by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLM) and other United States Government instrumentalities, shall be maintained for

Puerto Rico-originated loans existing on the date of the proclamation until maturity.

SEC. 318. PUBLIC DEBT.

The debts, liabilities, and obligations of the Commonwealth of Puerto Rico, its municipalities and instrumentalities, valid and outstanding upon the date of the proclamation of independence, shall be assumed by the Republic of Puerto Rico.

TITLE IV—COMMONWEALTH

SEC. 401. PROVISIONS.

Should Commonwealth be ratified under section 101(f) of the Puerto Rico Status Referendum Act, the provisions of this title shall go into effect.

SEC. 402. PRINCIPLES OF COMMONWEALTH.

(a) The Commonwealth of Puerto Rico is a unique juridical status, created as a compact between the People of Puerto Rico and the United States, under which Puerto Rico enjoys sovereignty, like a State, to the extent provided by the Tenth Amendment to the United States Constitution and in addition with autonomy consistent with its character, culture and location. This relationship is permanent unless revoked by mutual consent.

(b) The policy of the United States shall be to enhance the Commonwealth relationship enjoyed by the Commonwealth of Puerto Rico and the United States to enable the people of Puerto Rico to accelerate their economic and social development, to attain maximum cultural autonomy, to seek fair treatment in Federal programs, and in matters of government to take into account local conditions in Puerto Rico.

(c) The United States citizenship of persons born in Puerto Rico shall continue to be guaranteed and indefeasible to the same extent as that of citizens born in the several States.

SEC. 403. APPLICATION OF FEDERAL LAW.

(a) Notwithstanding any other provision of law, the Governor of the Commonwealth of Puerto Rico may certify from time to time to the Speaker of the House of Representatives and the President of the Senate, that the Legislature of the Commonwealth of Puerto Rico has adopted a resolution that states that a Federal law or provision thereof should no longer apply to the Commonwealth of Puerto Rico because there is no overriding national interest in having such Federal law be applicable in the Commonwealth of Puerto Rico and such applicability does not serve the interests of the people of the Commonwealth of Puerto Rico. A Federal law or laws or provision thereof so certified shall no longer apply to the Commonwealth of Puerto Rico if a joint resolution approving the recommendation of the Government of the Commonwealth of Puerto Rico is enacted.

(b)(1) This subsection is enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but is applicable only with respect to the procedure to be followed in this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith.

(2) For purposes of this subsection, the term "resolution" means only a joint resolution, the matter after the resolving clause of which is as follows: "That the House of Representatives and the Senate approve the recommendation of the Government of the Commonwealth of Puerto Rico in the certification submitted to the Congress on (date) ". Such resolution shall also include the certification received from the Governor of the Commonwealth of Puerto Rico and a copy of the resolution adopted by the Legislature of the Commonwealth of Puerto Rico.

(3) A resolution once introduced with respect to such a certification by the Governor of the Commonwealth of Puerto Rico shall immediately be referred by the Speaker of the House of Representatives and the President of the Senate, as the case may be, to the House Committee on Interior and Insular Affairs and to the Senate Committee on Energy and Natural Resources and at the same time to such other com-

mittees as the Speaker of the House of Representatives or the President of the Senate, respectively, shall determine.

(4)(A) If the committee or committees to which a resolution with respect to a certification by the Governor of the Commonwealth of Puerto Rico has been referred has not reported it at the end of forty-five calendar days after its referral, it shall be in order to move to discharge the committee from further consideration of such resolution.

(B) A motion of discharge may be made only by an individual favoring the resolution and shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same submittal), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to more to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same submittal.

(5)(A) When the last committee has reported, or has been discharged from further consideration of a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing such resolution. A motion to further limit debate shall not be debatable. An amendment to or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

(7) Notwithstanding any of the provisions of this subsection, if a House has approved a resolution with respect to a submittal, then it shall not be in order to consider in that

House any other resolution with respect to the same such submittal.

(8) For the purpose of this subsection—

(A) continuity of session is broken only by an adjournment of the Congress sine die; and

(B) the days on which either House is not in session because of any adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) This section shall not apply to—

(1) any Federal statutory law, or provisions thereof, establishing directly or indirectly grants and/or services to citizens of the United States as individuals;

(2) any Federal statutory law, or provisions thereof, relating to legislative matters within the jurisdiction of the Committee on Finance, or the Committee on Agriculture, Nutrition, and Forestry, of the Senate;

(3) any Federal statutory law or provisions thereof relating to citizenship; or

(4) any Federal statutory law or provisions thereof pretaining to the foreign relations, defense, or national security.

(d) The Governor of Puerto Rico may enter into international agreements to promote the international interests of

Puerto Rico as authorized by the President of the United States and consistent with the laws and international obligations of the United States.

SEC. 404. REGULATORY REVIEW.

(a) For the purposes of this section, the definitions in title 5, United States Code, section 551, apply.

(b) All agencies shall be guided by the policy stated in section 402 when carrying out their duties under statutes and rules applicable in or affecting the Commonwealth of Puerto Rico. Any agency that engages in rulemaking pursuant to title 5, United States Code, section 553, shall include in the concise general statement of the basis and purpose of any final rules adopted in response to any data, views, or arguments submitted to it that raise a question of the consistency of such rules with such policy.

(c) When an agency published in the Federal Register any final rule (other than a rule issued after notice and hearing required by statute), that does by its terms apply in the Commonwealth of Puerto Rico, the Governor of the Commonwealth of Puerto Rico may submit to the agency within thirty days (or such longer period as the agency may have prescribed as the period between publication of the rule and its effectiveness the Governor's determination that such rule is inconsistent with such policy and, if appropriate, of how it could be made consistent. Thereupon, the agency shall reconsider the question of the consistency of its rule with such policy and shall, within forth-five days of its receipt of the Governor's determination, publish in the Federal Register its finding either—

(1) that—

(A) by the terms of the statute pursuant to which the rule is made the agency has no discretion to make the rule inapplicable in the Commonwealth of Puerto Rico or to vary the terms of the rule in its application to the Commonwealth or,

(B) there is a national interest that the rule be applicable in Puerto Rico in the terms in which it was published, or

(2) that the rule is not consistent with such policy, in which case the rule, whether or not previously applicable in the Commonwealth of Puerto Rico in accordance with its terms as published, shall not be so applicable or shall be applicable only in accordance with the terms specified in the agency's finding.

(3) Within sixty days of the publication by an agency of the finding provided for in paragraph (1) the Governor of the Commonwealth of Puerto Rico, if aggrieved by such finding, may petition for review thereof in the United States Court of Appeals of the First Circuit or the District of Columbia Circuit. In any such

review proceeding the scope of review shall be as prescribed in section 706 of title 5, United States Code. Federal courts shall have no jurisdiction to entertain any action brought by any other party challenging agency compliance with this subsection.

(d) This section shall not apply to any rule issued pursuant to any Federal law, or provision thereof, relating to legislative matters within the jurisdiction of the Committee on Finance, or the Committee on Agriculture, Nutrition, and Forestry, of the Senate, as described in paragraph 1(i) of Rule XXV of the Standing Rules of the Senate (as in effect on the date of the enactment of this Act).

SEC. 405. AVIATION.

The officials of the Department of State and the Department of Transportation shall seek the advice of appropriate officials of the Commonwealth of Puerto Rico when negotiating any air transportation agreements which would affect air traffic to or from the Commonwealth of Puerto Rico.

SEC. 406. CARIBBEAN BASIN ECONOMIC RECOVERY ACT AMENDMENTS.

(a) Section 214(c) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 note) is amended—

(1) by striking "the treasuries of Puerto Rico or" and inserting "the treasury of", and

(2) by striking "produced in Puerto Rico [illegible]" and inserting "produced in".

(b) The amendments made by subsection (a) shall take effect on the first day of the fifth calendar year following the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs.

SEC. 407. FEDERAL PROGRAMS.

(a) GRANT CONSOLIDATION.—Section 501 of Public Law 95-134 (91 Stat. 1159, 1164) as amended, is further amended—

(1) by deleting "Virgin Islands," and inserting in lieu thereof "Virgin Islands, Puerto Rico,"; and

(2) by adding at the end of subsection (a) the following new sentence: "In the case of Puerto Rico, no consolidation of such grants may be made with respect to any programs established or operated under the Social Security Act or the Food Stamp Act of 1977.".

(b) NUTRITION ASSISTANCE AND FOOD STAMP PROGRAM.—

(1) INCREASED FUNDING LEVELS FOR THE NUTRITION ASSISTANCE PROGRAM IN PUERTO RICO.—Notwithstanding any other provision of law from the sums appropriated under the Food Stamp Act of 1977, the Secretary of Agriculture shall pay to the Commonwealth of Puerto Rico, the addition to the amounts re-

quired to be paid by the Secretary to the Commonwealth of Puerto Rico under subparagraph (A) of section 19(a)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2028(a)(1)(A)), the following additional sums for the years described—

(A) $112,500,000, for the fiscal year beginning on October 1 of the first calendar year after the date of the ratification of the "Commonwealth" status option by the people of Puerto Rico (hereinafter referred to in this subsection as the "first fiscal year after ratification");

(B) $250,000,000, for the fiscal year immediately following the first fiscal year after ratification; and

(C) $337,500,000, for the second fiscal year after the first fiscal year after ratification.

(2) FOOD STAMP PROGRAM.—Beginning on the first day of October prior to January 1 of the fifth calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum Act occurs:

(A) Puerto Rico shall participate in the food stamp program under the Food Stamp Act of 1977 on equal footing with any other State of the

United States except as provided in section 19 of such Act; and

(B) the block grant program authorized under section 19 of such Act for Puerto Rico is terminated.

(3) AMENDMENTS TO THE FOOD STAMP ACT OF 1977.—Beginning on the first day of October prior to January 1 of the fifth calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum Act occurs, section 19 of the Food Stamp Act of 1977 (7 U.S.C. 2028) is amended to read as follows:

"SEC. 19 (a). SPECIAL RULES.—Notwithstanding any other provision of this Act, the Commonwealth of Puerto Rico shall participate in the program under the requirements of this Act except as follows:

"(1) a household within such Commonwealth shall be ineligible to participate in the food stamp program (notwithstanding the provisions of section 5(c) of the Act) if such household's income, after the exclusions are made as provided for in section 5(d) of such Act and before the deductions in such income are made under section 5(e) of such Act, exceeds 65 percent of the poverty line as defined in section 5(c)(1) of such Act;

"(2) the standard deduction for purposes of determining benefits in such Commonwealth shall be 59 per centum of the standard deduction determined under section 5(e) of the Act for the forty-eight contiguous States and the District of Columbia; and

"(3) the maximum excess shelter expense deduction to which a household within the Commonwealth may be entitled shall be thirty-five per centum of the maximum excess shelter expenses deduction determined for the forty-eight contiguous States and the District of Columbia under paragraph (2) of the fourth sentence of section 5(e) of the Food Stamp Act of 1977 for the household.

"(b) The Commonwealth of Puerto Rico shall participate in the program under the requirements of this Act except that the Commonwealth must make benefits available through the use of intelligent benefit cards, other automated or electronic delivery system, or other benefit delivery system specifically designed to promote the integrity of the program.

(4) LEGAL RIGHT TO ADDITIONAL SUMS.—Unless otherwise provided through legislation providing Federal revenues, the Secretary of Treasury is required to pay to the Secretary of Agriculture all additional amounts required to be paid by the Secretary of

Agriculture to the Commonwealth of Puerto Rico under the Puerto Rico Status Referendum Act to operate the Nutrition Assistance Program under section 19 of the Food Stamp Act. The Commonwealth of Puerto Rico is legally entitled to receive from the Secretary of Agriculture such additional amounts.

SEC. 408. CONSULTATION IN APPOINTEES AND NOMINATIONS.

(a) In considering the qualifications of persons who may be appointed to serve as: Supervisor, Caribbean National Forest; Superintendent, San Juan Historic Site; Manager, Department of Housing and Urban Development, San Juan; Director, Caribbean Field Office, Environmental Protection Agency; Director, Farmer's Home Administration, San Juan; District Director, United States Customs Service, San Juan; District Director, Small Business Administration; and District Director, Immigration and Naturalization Service; the head of such department or agency shall consult with the Governor or other appropriate official in Puerto Rico as to whether there are special circumstances or qualifications which should be considered in making the appointment.

(b) Prior to nominating any person to serve in Puerto Rico whose appointment requires the advice and consent of the Senate of the United States, the President shall consult with the Governor as to whether there are any special circumstances or qualifications which should be considered in deciding on a nomination. Nothing in this section requires or prohibits the disclosure of individuals under consideration for such position nor as a limitation on the ability of the heads of agencies to appoint, or the President to nominate any individual. This subsection shall not apply with respect to any position in the Armed Forces of the United States, the Coast Guard, and in agencies engaged in law enforcement.

SEC. 409. PUERTO RICO LIAISON OFFICE.

(a) There is hereby established the Office of Senate Liaison for the Commonwealth of Puerto Rico ("Office"). The Office shall be headed by an individual appointed by the Governor of Puerto Rico and who shall serve at the pleasure of the Governor and who shall be known as the Puerto Rico Liaison. The purposes of the Office shall be to facilitate the exchange of information between the Senate and the Government of Puerto Rico.

(b) The Committee on Rules and Administration shall determine what facilities and services shall be available to such Office. All personnel of such Office shall be issued such identification as will entitle them to the same privileges as are afforded to employees of the Congressional Research Service and no employee of the Office shall be permitted privilege of the Senate floor.

(c) There are authorized to be appropriated annually $600,000 for salaries and $56,000 for office expenses of the

Office. The Liaison shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office, including the Liaison, while not employees of the Senate, shall, other than as provided in subsection (b), be treated as if they were employees of the Senate with respect to pay and employment benefits, rights, privileges, and restrictions and shall be subject to all requirements otherwise applicable to employees of the Senate.

(d) The Office shall be subject to the jurisdiction of the Committee on Rules and Administration.

SEC. 410. PASSPORTS.

(a) The following new section shall be added to title 22 as section 211b:

"SECTION 211b. UNITED STATES PASSPORT OFFICE IN PUERTO RICO.

"The Secretary of State shall establish a Passport Office for the Caribbean located in San Juan, Puerto Rico.".

(b) The Secretary of State and the Attorney General of the United States shall consult with the Governor of Puerto Rico to determine what administrative actions can be taken to expedite the processing of visas and also to provide an expedited consideration of visas where the Governor makes such a request to accommodate an individual or individuals who have been invited to Puerto Rico by the Governor and shall report to Congress on such consultations and administrative action by March 15, 1993.

SEC. 411. COMMUNITY VALUES.

(a) For purposes of this section—

(1) "antitrust laws" has the meaning given such term in the first section of the Clayton Act (15 U.S.C. 12) and shall also include section 5 of the Federal Trade Commission Act (15 U.S.C. 45);

(2) "person in the television industry" means a television network, any entity which produces programming for television distribution, including theatrical motion pictures, the National Cable Television Association, the Association of Independent Television Stations, Inc., the National Association of Broadcasters, the Motion Picture Association of America, and each of the networks' affiliate organizations, and television stations and cable television operators licensed to operate in Puerto Rico and shall include any individual acting on behalf of such person; and

(3) "telecast" means any program broadcast by a television broadcast station or transmitted by a cable television system.

(b) The antitrust laws shall not apply to any joint discussion, consideration, review, action or agreement by or among persons in the television industry for the purpose of, and limited to, developing and disseminating voluntary guidelines designed to (1) alleviate the negative impact of violence in telecast material, (2) alleviate the negative impact of illegal drug use in telecast material, and (3) alleviate the negative impact of sexually explicit material in telecast material, and promote local programming in the Commonwealth of Puerto Rico.

(c)(1) The exemption provided in subsection (b) shall not apply to any joint discussion, consideration, review, action, or agreement which results in a boycott of any person.

(2) The exemption provided in subsection (b) shall apply only to activities conducted within thirty-six months after the date of enactment of this Act, but may be extended for other thirty-six-month periods upon declaration by the Governor of Puerto Rico.

SEC. 412. FEDERAL PROPERTIES.

(a)(1) The President shall report to Congress by March 15, 1993, on the Federal properties listed in paragraph (3). The report shall include an assessment of the Federal need for each property, the costs or benefits, or both, of disposal of each property, and the comments of the Government of the Commonwealth of Puerto Rico regarding each property.

(2) Unless the President finds that there is a national interest which requires continued Federal ownership of each property, then he shall provide for the transfer of such prop-

erties to the Commonwealth of Puerto Rico according to such terms as he determines to be appropriate with respect to each.

(3) The Federal properties listed in this paragraph are—

(A) Former Stop 7½ Naval Residence;

(B) San Geronimo Quarters;

(C) Custom House in San Juan;

(D) Custom House in Mayaguez;

(E) Custom House in Ponce;

(F) Custom House in Fajardo; and

(G) Coast Guard facility at Puntilla.

SEC. 413. SAN JUAN NATIONAL HISTORIC SITE ADVISORY COMMISSION.

(a) There is hereby established a commission to be known as the San Juan National Historic Site Advisory Commission ("the commission") which shall regularly advise the Secretary of the Interior ("the Secretary") on the operation, management, and administration of the San Juan National Historic Site ("the site").

(b) The commission shall consist of the Governor of the Commonwealth of Puerto Rico (or the Governor's designee), the Director of the National Park Service (or the Director's designee), three members to be appointed by the Governor of the Commonwealth of Puerto Rico, and three members to be appointed by the Secretary. One of the members appointed by the Governor and one member appointed by the Secretary shall serve as cochairpersons of the commission.

(c)(1) Members appointed to the commission by the Governor and the Secretary shall be appointed for a term of four years. A member may serve after the expiration of his term until his successor has taken office.

(2) Any vacancy on the commission shall be filled in the manner the original appointment was made.

(3) Members of the commission shall receive no additional pay, allowances, or benefits as a result of their service on the commission, but the Secretary may pay expenses reasonably incurred in carrying out their responsibilities under this section on vouchers signed by the cochairpersons;

(4) A majority of the members of the commission shall constitute a quorum but a lesser number may hold hearings. Each member of the commission shall be entitled to one vote, which shall be equal to the vote of every other member of the commission.

(5) The provisions of section 14(b) of the Federal Advisory Committee Act (Act of October 6, 1972; 86 Stat. 776) are hereby waived with respect to the commission.

(d) The Secretary shall from time to time, but at least annually, meet with the commission on matters relating to the planning, management and administration of the site. Such meetings shall be open to the public and shall be held at such times and in such places as to encourage public participation. The commission shall provide the public with adequate notice of such meetings.

(e) The commission shall prepare annually and transmit to the Secretary, the Committee on Energy and Natural Resources of the United States Senate, and the Committee on Interior and Insular Affairs of the United States House of Representatives, a report containing such information and recommendations regarding the operation, management, and administration of the site as the commission deems desirable, including but not limited to recommendations with respect to the version of the general management plan for the site.

SEC. 414. TAXATION.

(a)(1) Section 936(a)(2)(B) of the Internal Revenue Code of 1986 shall be applied—

(A) in the case of a corporation's 4th taxable year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, by substituting "80 percent" for "75 percent", and

(B) in the case of a corporation's subsequent taxable years, by substituting "85 percent" for "75 percent".

(2) For purposes of paragraph (1), a taxpayer whose 1st taxable year begins after the date of ratification under section 101(f) of the Puerto Rico Status Referendum Act shall be

treated as if such taxpayer had such a taxable year (and subsequent taxable years) in effect on (and after) such date.

(b)(1) In the case of each fiscal year which begins in a calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, notwithstanding section 7652 of the Internal Revenue Code of 1986 and section 4 of the Act of April 12, 1990 (31 Stat. 78), the amount of taxes and customs duties covered into the treasury of Puerto Rico under such sections shall be reduced (but not below zero) by the greater of the basic reduction under paragraph (2) or the excess of—

(A) the amounts payable with respect to such year to Puerto Rico under parts A and E of title IV, title XVI (as in effect before the date of the enactment of Public Law 92-603), and title XIX of the Social Security Act, over

(B) the sum of the amount determined under paragraph (3), plus $161,000,000.

(2) For purposes of paragraph (1), the basic reduction shall be determined in accordance with the following table:

"In the case of the following years to which this subsection applies:	**The basic reduction is:**
1st	$120,000,000
2nd	$250,000,000
3rd	$325,000,000
4th	$443,000,000
5th and subsequent	$422,000,000

(3) For purposes of paragraph (1)(B), the amount determined under this paragraph is determined in accordance with the following table:

"In the case of the following years to which this subsection applies:	The reduction is:
1st	$0
2nd	$0
3rd	$30,000,000
4th	$80,000,000
5th and subsequent	$101,000,000

(4)(A) In the case of the 5th and following fiscal years to which paragraph (1) applies, there shall be substituted for the $422,000,000 amount in the table under paragraph (2) and for the $101,000,000 amount in the table under paragraph (3), respectively, an amount equal to such amount multiplied by the applicable ratio.

(B) The applicable ratio for any fiscal year is the percentage arrived at by dividing—

(i) the gross national product for the calendar year preceding the calendar year in which the fiscal year begins, by

(ii) the gross national product for the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act.

(C) The gross national product for any calendar year is the last determination of such gross national product published as of October 1 of the succeeding calendar year by the

Bureau of Economic Analysis of the Department of Commerce.

SEC. 415. OPERATION OF AND TRANSITION FOR CERTAIN ENTITLEMENTS.

(A)(1) Except as otherwise provided in this subsection, if Commonwealth for Puerto Rico is ratified under section 101(f) of the Puerto Rico Status Referendum Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide, beginning on January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, and subject to paragraph (2), that no payments be made to the Commonwealth of Puerto Rico under title XVI of hue Social Security Act (as in effect before the date of the enactment of Public Law 92-603), or under titles I, X, or XIV of the Social Security Act, or under title XIX of the Social Security Act unless the Secretary determines that assistance levels applicable to aged, blind, or disabled in Puerto Rico under titles, I, X, XIV, or XVI are set at levels consistent with the levels provided under section 1611(a)(1)(A) and 1611(b)(1) of the Social Security Act adjusted so as not to exceed 50 percent of the per capita income of Puerto Rico (as determined on the basis of the most recent reliable data available from the Secretary of Commerce), and under section 1611(a)(2)(A) and 1611(b)(2) of the Social Security Act adjusted so as not to exceed 75 percent of the per capita income of Puerto Rico (as determined on the basis of the most recent reliable data available from the Secretary of Commerce). The Secretary shall promulgate the amounts determined under this paragraph for Puerto Rico at the same time and in the same manner as amounts are promulgated for cost of living adjustments in benefits under section 1617 of the Social Security Act.

(2) Beginning on January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(e) of the Puerto Rico Status Referendum Act, the provisions described in paragraph (1), shall be implemented on a modified basis providing that benefit levels under any of the programs described in paragraph (1) shall after any reduction under the per capita limitation described in paragraph (1) be set at—

(A) 25 percent of the otherwise applicable level in such 2nd calendar year;

(B) 50 percent of such level in the calendar year immediately following such 2nd calendar year; and

(C) 75 percent of such level in the 2nd calendar year following such 2nd calendar year.

(b)(1) Beginning on January 1 of the 2nd calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, Federal funding of the Aid to Families with Dependent Children program provided under part A of title IV of the Social Security Act shall be set at 50 percent of the total cost of providing benefits under such program.

(2) Beginning on January 1 of the second calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, the limitation on expenditures provided for under section 1108 of the Social Security Act shall not apply with respect to expenditures under the Aid to Families with Dependent Children program operated in Puerto Rico.

(c)(1) The Medicaid program provided for under title XIX of the Social Security Act shall continue to operate in Puerto Rico as it is operated on the date of the enactment of this Act, except as may be provided for through agreement of the Government of Puerto Rico and the Secretary.

(2) Beginning on January 1 of the second calendar year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, the limitation on expenditures provided for under section 1108 of the Social Security Act shall not apply with respect to expenditures under the Medicaid program operated in Puerto Rico, except that for the first three fiscal years beginning after the end of the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum

Act occur Federal payments to Puerto Rico with respect to title XIX of the Social Security Act shall not exceed an amount equal to $79,000,000, increased by the applicable percentage of the excess of the amount payable without regard to such section 1108 over $79,000,000. The applicable percentage is 25 percent for the 1st such fiscal year, 50 percent for the second such fiscal year, and 75 percent for the third such fiscal year.

(d) The Secretary shall reduce the amounts otherwise payable to Puerto Rico under parts A and E of title IV, title XVI (as in effect before the date of the enactment of Public Law 92–603), and title XIX of Social Security Act with respect to expenditures under such titles for any fiscal year beginning after the end of the calendar year in which the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act occurs to the extent that the sum of such amount exceeds the sum of—

(1) $161,000,000, plus

(2) the amount which, but for the provisions of section 414(b) of this Act, would have been covered over to Puerto Rico for excise taxes and custom duties under the laws in effect as of January 1, 1990, plus

(3) the amount determined under section 414(b)(3) of this Act. The Secretary of the Treasury shall make an annual determination of such amount and provide

for appropriate adjustment in such amount as determined for prior years.

(e) The Medicare Hospital Insurance Benefits for the Aged and Disabled program provided for under part A of title XVIII of the Social Security Act shall continue to operate in Puerto Rico as it is operated on the date of the enactment of this Act, except that, the Prospective Payment Assessment Commission shall examine current levels of reimbursement under such part and advise the Secretary within six months of the date of the enactment of this Act as to whether the system in place on the date of the enactment of this Act accurately and appropriately reflects cost differentials between Puerto Rico and the States. The Secretary shall, if such study finds that the system in effect on the date of the enactment of this Act does not accurately reflect such cost differentials, submit to the appropriate committees of Congress within six months of the date of completion of such study a legislative proposal to correct any deficiencies in the reimbursement system.

(f)(1) Except as provided in paragraph (2), in the case of any fiscal year, beginning with the fifth fiscal year beginning after the date of the ratification under section 101(f) of the Puerto Rico Status Referendum Act, Puerto Rico shall be treated as a State for purposes of determining the amount of its allocation of funds under title XX of the Social Security Act.

(2) Notwithstanding section 2003(b) of the Social Security Act, Puerto Rico Shall be responsible for 50 percent of the cost of the allocation of funds described in paragraph (1).

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The CHAIRMAN. Senator Wallop.

STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Senator WALLOP. Thank you, Mr. Chairman. I have a few opening observations and will have several questions for each of the three parties, and I will also likely have some further questions which I will submit after the hearing, and may have more after we have heard from the administration on the February 7.

I want first to express my appreciation to each of the three parties for their kindness and hospitality during our visit in December. The discussions which we had there were very helpful to me, and I regret that my schedule had prevented me from participating in the hearings which the committee held in Puerto Rico 2 years ago. But it is particularly impressive to note the degree to which status considerations affect the approach of each of the parties to almost any legislative proposal.

I also developed a far better understanding of how Congress has complicated this debate.

Senator McClure noted in last Congress that in 1917 the United States extended citizenship to Puerto Ricans, treating Puerto Rico as part of the United States, and less than a year later declared Puerto Rico to be a foreign country for tax purposes. Those are not the only examples, but they do illustrate how complicated consideration of this issue will be and how much time and effort will be required for this committee to be satisfied with our recommendations.

I also want to compliment you, Mr. Chairman, for your perseverance. You are almost solely responsible for bringing this issue to the attention of both the Senate and the House. Quite frankly, my first impression in the last Congress was that both you and Senator McClure must have spent too much time in the sun. But I have changed my mind, and I want to express my admiration to you for your efforts to involve other members.

I am somewhat concerned over the timing that you have expressed and the targets that you have laid down. I understand the concern which the three parties have that Congress enact this legislation within the next few months so that a referendum may be conducted this year, and I agree that we should attempt to avoid confusing this issue with the general elections next year.

However, I am not certain that the timetable is realistic. It is far too important an issue to be rushed through, and we have several members of this committee who were not present for the hearings and consideration, committee consideration, in the last Congress. And as everyone knows, we did not consider this on the floor. Most of the Senate therefore has not had time to consider the issues presented.

A more vexing problem, however, is likely to be the attitude taken by the subcommittee chairman on the House side. So far as I understand it, the House position is that they have no intention to consider legislation with detailed definitions. I agree with Senator Johnston and his position that we really need to specify precisely what it is the Congress is willing to agree to, if in fact it is willing to agree to any of the three options in this legislation.

So if we are facing an impasse with the House, then it may be well that the three parties simply go ahead with the referendum on their own. There is no requirement for congressional authorization for a referendum to be held and, since the chairman has deleted the self-implementing provisions of this legislation, the only issue left then would be the degree of detail which is provided.

I would hope that we can fulfill the schedule set forth, Senator Johnston. But I am not so sanguine as you about our ability to do so. The San Juan Star, for example, has quoted the Speaker of the Puerto Rico House as stating that our current schedule would not permit sufficient time for a referendum to be held in December, and suggesting that a date in 1993 or 1994 would make more sense.

I should also note that, although this legislation no longer includes self-implementing language from last Congress, I have not made up my own mind as to whether I will offer that in the committee or on the floor. But just as I believe and agree with the chairman that we should spell out exactly what Puerto Rico is voting on, I also believe that Congress should be prepared to live with the result.

If we are not prepared to live with independence, if we are not prepared to live with statehood or the proposed changes in commonwealth, then we should delete these options, amend them so that we are prepared to support them, or not enact the measure.

There were proposals put forward by each of the three parties last Congress which I was not prepared to support, and in fact I voted against reporting S. 712 to the Senate. The approach of the House in suggesting that Congress should be bound by the results of an undefined beauty contest is in my view both irresponsible and dangerous. If we are not able to resolve our differences, then I think Puerto Rico should seriously contemplate going ahead with a referendum on its own, with the clear understanding that the results will give Congress some idea of the general direction in which Puerto Rico would like to go.

This is the first step, in fact, in self-determination. An enormous amount of work was accomplished last Congress by both this committee and the Finance Committee, and that work should be helpful not only to the committee and the Senate, but also to Puerto Rico.

I think the debate so far as helped to focus the discussion and better define the issues. If it were not for the work of this committee in the last Congress, I doubt that the Finance Committee would have spent the time and effort to focus on the impact of programs within their jurisdiction. If we are not able to resolve this legislation this year, for whatever reasons, the debate in my opinion should nevertheless continue to its conclusion.

I would caution patience for all parties, and that is not to say, Mr. Chairman, that I view 92 years of waiting as impatience. But we are in a moment in time in which real decisions can be framed, to the extent that the American public and the Congress can take them, and I think we ought not to back off from that simply because timetables get jiggered off of track.

It may be that the immediate result of this process, the immediate result, is not the enactment of the referendum, but rather the enactment of some transition provisions to eliminate some of the complexity. I do not know at this point in time exactly where I am going to wind up. I do know that this debate needs to be expanded beyond this committee and that it is far too important for both the Senate and Puerto Rico for it to be rushed beyond reason.

Thank you very much.

The CHAIRMAN. Thank you, Senator Wallop.

Senator Conrad.

STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. Thank you, Mr. Chairman.

Very briefly, I would comment that this bill has been significantly improved in my judgment over what we had before us last year. The fact that you have changed this so that it is not self-implementing I believe is a significant improvement. I also think we are now much better informed, especially with regard to the economics of whatever decisions are made here, as a result of the Finance Committee's study.

Third, I would agree with the chairman that we owe it to the people of Puerto Rico to be clear on our intentions. We ought not to go through an exercise in which anything is possible and anything might happen. We ought to be clear about what the results of the decisions will be.

Fourth, I just want to comment that the Puerto Rican people who are parties to this debate I think have conducted themselves with great dignity. I have met repeatedly with various representatives of the different viewpoints and I must say I have been very impressed by the way they have conducted themselves in this debate.

Thank you, Mr. Chairman. I look forward to this hearing.

The CHAIRMAN. Senator Nickles.

STATEMENT OF HON. DON NICKLES, U.S. SENATOR FROM OKLAHOMA

Senator NICKLES. Mr. Chairman, thank you very much, and I would associate my remarks with that of my friend and colleague, Senator Conrad.

I also want to thank you and Senator Wallop and also our panelists today for their hospitality for their hospitality on the trip to Puerto Rico. It was a very enlightening trip, a very enjoyable trip, and educational as well.

I might also say, Mr. Chairman, that it has raised some questions in my mind as far as some of the options and some of the challenges that we have. And I would concur with Senator Wallop as far as your aggressive timetable. I have reservations whether we can make that, knowing the challenges that we have, not only in this committee, but also in the Finance Committee, on the floor of the Senate, and also through the House of Representatives.

That is a very ambitious schedule, one that will be difficult to meet, to say the least.

I will be very open in stating I have some reservations concerning the statehood option. I am not sure that many people in the United States have seriously considered whether having Puerto Rico join the Union as a State is something that we want to do. It is something we need to discuss. It is something we need to debate.

We have significant differences right now with Puerto Rico, economic differences, cultural differences, geographical differences, language differences that need to be considered, need to be discussed.

Would the merger be a good thing for the people of Puerto Rico? Would it be a good thing for the people of the United States? Would it be accepted by the people of the United States and accepted by the people of Puerto Rico? Would it be accepted if the referendum passed by 51 percent? Is that something that the people of the United States would want to have?

If a bare majority of the people of Puerto Rico voted for statehood, would we want to be joining a lasting, binding union with the United States?

I think those are important questions. I think it is an important question, would it be good for the United States and would it be good for Puerto Rico? I look forward to our panelists answering some of these questions.

Again, I would concur with Senator Conrad that it has been a pleasure getting to know many of the representatives who are leaders in Puerto Rico, leaders of their party. I look forward to these hearings and the subsequent markups on which we will be working.

The **Chairman**. Thank you very much, Senator Nickles, and also thank you for going with us down to Puerto Rico.

Let me just state a couple of things. First, if members want to go to Puerto Rico, I would very much encourage that. And we can organize a committee trip in this next recess if you would like to go. I think you would find it very enlightening and very informative.

Secondly, with regard to the schedule, I do not think that schedule is that ambitious here in the Senate. We have considered this before. Since it is not self-implementing, it will not have to go back to the other committees of jurisdiction in the Senate. This is the only committee it needs to go to.

Recognize, of course, that the conference with the House may or may not take a long time. Maybe we cannot resolve it with the House. But the schedule in the Senate, I think, is not the problem.

There are, as Senator Nickles suggests, some tough questions. But I think Puerto Rico is entitled to some answers. I do not think it serves us, as a Nation, to just say let us not find out the answer to how we would feel about self-determination. I think we ought to ask those hard questions and answer them.

For my part, I would give Puerto Rico the choices as stated here. I have stated that I have no choice among the three so long that I really believe that. I think I am as nonpartisan as you can get on this question.

I think the people of Puerto Rico, after this legislation is passed, ought to have that choice.

Senator **Wallop**. May I just say one thing? Let me here, with all the television cameras and the press and everybody around, counsel and urge my colleagues to go to Puerto Rico. There is too much to be learned that cannot be found by staying here. This is no junket. This is an educational experience, which I think, and Don would agree with me, that requires and consumes a lot of time. But it provides a lot of information about the various issues that are at hand.

The CHAIRMAN. Thank you very much.

Senator Wellstone.

STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Senator WELLSTONE. Thank you, Mr. Chairman.

I am new to the Senate, and today I learned my first lesson, which is quite often our committees meet at the same time.

So I would like to say to the panelists that even if I am not able to be here during all of your testimony, I thank you for being here and it does not reflect any lack of interest on my part in this debate and this discussion, which I think we all agree has to go on.

I must say, Mr. Chairman, that in many ways, while I think there are many questions, it boils down to one simple question. And that is the question of whether or not the people in Puerto Rico have the right, in a referendum, to determine their own status. We call that self-determination.

I believe that people in our country feel very strongly about that. I must say that while I approach these hearings and approach this discussion and this debate with an open mind, I find that principle to be a compelling principle.

And I find your words, Mr. Chairman, to be, I think, powerful. I believe the people of Puerto Rico have waited a long, long, long, long time, and I think the time has come for all of us here, first in this committee and in the Senate, to be very clear about where we stand.

And for my own part, I believe that this principle of people being able to vote in a referendum about their own status is a principle of the utmost importance.

The CHAIRMAN. Thank you very much for your kind words, Senator Wellstone. You are very correct. We do have committees that meet at the same time. I would urge you to be here, particularly today.

[Laughter.]

Senator WELLSTONE. It is a funny thing. I got urged by someone else to be there.

The CHAIRMAN. The other committees on which you serve will not act with as much dispatch and I can tell you will not have as much meat on the bone as we are going to have here today, because we've got the three leaders of the parties. You will find them to be, each in his own way, extremely persuasive and able.

Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Mr. Chairman, let me be very brief. I have some comments. I would like you to put them in the record. I have written them and then I would like a couple of minutes.

The CHAIRMAN. Without objection.

Senator DOMENICI. First, I think it is fair and necessary that we compliment you again. You have been complimented. Matters of this import deserve to be attended to and not to be left on the table indefinitely.

Secondly, and on the other hand, let me suggest that I hope the people of Puerto Rico do not believe that there is any, at this point, any intentional effort to delay this issue.

This issue is serious. And one need not go into American history in any depth to find that even as States that are on the continent tried to become States in this Union, in many instances it was years before it was finally achieved. And in many instances it was controversial, and we were neighbors with just a fence in between.

Whether that State was going to join this magnificent Union called the United States or not sometimes took 15 years or 20 years. And up here in the Senate, it was heated. You cannot imagine, the Puerto Ricans, the kinds of things American Senators said about fellow continental neighbors.

I mean, States were held up 6 and 8 and 10 years with accusations by Senators of what those States were, they did not deserve to be in the Union and all kinds of things that I hope everyone understands were nothing more than the early, early consideration by our leaders of the significance of statehood.

And I am not suggesting this is singularly an issue of statehood. It is an issue of what are the Puerto Rican's rights at this point in history to make some decisions for themselves that might indeed change their current status. So it is not a statehood issue.

But you must understand that the way we are proceeding, and the way our distinguished chairman and those who help him are proceeding, it is a clear option. And if it occurs, it is his desire that we not be vague with the Puerto Ricans in the event that they so chose, that we not let that event drag on thereafter for years, if I understand what he is trying to cause us to do.

So I hope you understand that while we have been together, in a sense, for a long time, Puerto Rico and the United States, this is a big issue, grande, grande. Uno de los mas grande among us and for you.

I also want to conclude by saying I am remiss by not going there thus far. I always find something else and say I am too busy. But I do sense from both of you that it is right that as many United States Senators as possible go, and not for an hour and not to go there and visit a couple of restaurants and go to a nice beach. I think you have to get a sense of what is this about. And on your own, find out what the people are and what their problems are and get some feel. More of us ought to do it.

I cannot tell you today that I accept yours or our ranking member's invitation and that I will go next week. Like our new Senator, I do not know where I am going to find the time to be an adequate participant in this, much less find time to go there. But I think we ought to make at least a public commitment to your people, Puerto Ricans, that we will try to come there and get to know you better. I urge that more of us do.

Thank you. I look forward to these hearings.

My last comment is that it is rather exciting and—I do not mean that in any way but a positive mode—it is fun for this committee to have this kind of issue. We do not get this kind of issue very often. And I think it is always somewhere else that such matters of individuals' freedom, rights, choices by people, those are never discussed by us. I think we go in, not necessarily without strong feet, but we go at it a little slower perhaps because we do not do this very often.

That might mean we will do it better, however.

Thank you very much.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

I want to compliment you and Ranking Member for the diligent work that you have put into this issue, and I compliment the leadership of Puerto Rico and its political parties for their efforts in bringing this issue to the forefront.

This issue is, as I see it, important for the United States and for the world. The spread of political self-determination throughout the world has never been more important than now. In some areas it is taking great leaps forward and in others it is being seriously challenged. The war in the Persian Gulf is a multi-national endeavor that demonstrates that the ability of a people to practice self-determination is a right held dear by vast majority of the nations of the world.

A referendum by the people of Puerto Rico to determine their political status is an exercise in the United States practicing what we preach. The people of Puerto Rico want the opportunity to exercise their individual rights at the ballot box to determine their collective destiny and their relationship with this country and the world.

No one of us here can predict the results of this referendum, but it is imperative that we all of us work together so that the will of the people of Puerto Rico can be made known. The issues confronting us are complex and the answers will not be easy to develop. It seems to me at this time that we can afford to do no less than join hands and do the best we can to give the people of Puerto Rico the opportunity to determine their own destiny by using a basic tool of democracy: voting.

I look forward to working on this committee with you, Mr. Chairman, and with the Ranking Member and look forward to the testimony today. This will be a long trip together. As a Senator from a state that was formerly a territory I know how long the trip can be. New Mexico first petitioned the Congress for resolution of its political status in 1850. Sixty-two years later, New Mexico was finally admitted to the union as the 48th state.

Statehood for New Mexico was appropriate because that is what the people of New Mexico wanted. A referendum in Puerto Rico will allow the people of Puerto Rico to express their desires for the best form of government for them in the future.

Thank you very much.

The **CHAIRMAN**. Thank you, Senator Domenici.

Senator Bumpers.

Senator **BUMPERS**. I do not have an opening statement, Mr. Chairman.

The **CHAIRMAN**. Senator Burns.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator **BURNS**. Thank you, Mr. Chairman.

My statement is fairly short. It was just the last couple of years that I have been acquainted with this issue. Again, I would congratulate you on your dedication to resolve this. I think it is a right and just cause.

We are dealing with the fate and the status of 3.5 million Americans who have displayed and demonstrated an undying loyalty to the values of a democratic republican form of government and to join the Union of the United States of America.

Sure, we have differences, cultural and the like. But this body is not unaccustomed to differences, even among our own States that are in the Union now. So I congratulate you on meeting this head on. We owe it to our friends in Puerto Rico.

I have visited there on two or three occasions and have a good friend living there. I have yet to figure out how Sam and his wife get that big, old van down through the small streets in the old part of San Juan. But they are great friends of our family and we owe to these people to address it and move it along as speedily as we can.

So I congratulate you. And, yes, it is a fun issue—not a play issue. There is a difference between fun and play. But it is deciding and letting those people of Puerto Rico decide their fate and their status.

So I thank you for this opportunity, Mr. Chairman. I think we should move forward.

The CHAIRMAN. Thank you very much, Senator Burns.

Senator Craig.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Mr. Chairman, let me compliment you for engaging us in this discussion and this debate. It is certainly worthy of our time and the commitment we have had as a Nation to Puerto Rico these good number of years.

I look forward to participating.

The CHAIRMAN. Thank you very much, Senator Craig. If you can contribute half as much as your predecessor, Senator McClure, did to this issue, it will be a tremendous contribution.

I think we need to mention Senator McClure and the many, many, many weeks and months of work that he put in so effectively on this as well as other issues.

Senator CRAIG. Mr. Chairman, he has counseled me appropriately on this issue.

The CHAIRMAN. Thank you very much, Senator Craig.

Now we are going to hear from the three party leaders. It may be—I wonder if we should hear from all three before we go into questioning. Perhaps we should do that, otherwise we may not get full time for each one.

Our order of having our witnesses today is in reverse order from the way we had it in the first day because we want to be fair to each one.

So our first witness will be the Honorable Carlos Romero Barcelo, president of the New Progressive Party, former Governor of Puerto Rico. He is accompanied by, also a former Governor, Luis A. Ferre; by Benny Frankie Cerezo; and by Harry McPherson, who is not a Puerto Rican, but I think maybe sometimes would like to be.

So, with that, I can say, Governor, we are delighted to have you and please proceed.

STATEMENT OF HON. CARLOS ROMERO BARCELO, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO AND PRESIDENT, NEW PROGRESSIVE PARTY, ACCOMPANIED BY HON. LUIS A. FERRE, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO; HARRY McPHERSON; AND BENNY FRANKIE CEREZO

Governor **Romero Barcelo**. Thank you, Mr. Chairman.

First of all, I would like to congratulate the Chairman for the opening statement. I think it was a very, very clear statement, and it also explained many things that were up in the air. I think it is helpful for the people of Puerto Rico to have these kinds of statements.

I would like to congratulate, also, Senator Wallop for his statement and for his interest in this issue, and all of the other Senators. Senator Nickles was down in Puerto Rico with us, and Senator Domenici, Senator Burns, Senator Craig, Senator Murkowski, and Senator Bumpers, and all the others that have shown a great interest in this issue and are here today to listen to more about it.

For the record, my name is Carlos Romero Barcelo, and I am the chairman of the New Progressive Party, which is the statehood party in Puerto Rico. I served as mayor for 8 years, mayor of San Juan, and as Governor for 8 years.

And I am privileged to be accompanied here today by the founder of our New Progressive Party, Luis A. Ferre, this man has inspired generations of Puerto Ricans in our quest for political equality, and whose grandson, at this moment, is serving in the armored division in the front lines in the Gulf. And when I finish——

The **Chairman**. Governor Ferre's grandson?

Governor **Romero Barcelo**. Yes. And when I finish I would like to have him say a few words on this issue.

The **Chairman**. By the way, not to interrupt you, but on that point, I know Puerto Rico had higher losses in the Vietnam War and many other losses in many other wars than most States of the Union. Do you have those figures?

Governor **Romero Barcelo**. For Korea, it was even more so. In Korea we were number 4 in number of dead. And in relation to the population of the States, we would be about number 24 or 25 in population, and we were number 4 in number of dead in Korea.

In Vietnam, we also had very high casualties, but not as high proportionately as in Korea.

Senator **Bumpers**. Governor, before you go on, let me pursue that, how many guardsmen and reservists from Puerto Rico are in the Arabian Desert right now?

Governor **Romero Barcelo**. Right now we are 10,000. Yes, which is quite a——

Senator **Bumpers**. Do you know how, population-wise, that compares with the other States?

Governor **Romero Barcelo**. Well, the population, I believe is 3.5 million, 3.6 million, which is about 1 percent of the population of the Nation. So the 12,000 would probably be about 4 or 5 percent—

not quite, maybe about 3 percent of the whole force. So it is substantially higher.

The CHAIRMAN. I think that is higher than any State, because I believe that Louisiana, with 8,600 guard and reserve, is number 1 of any State. So you must be the highest, higher than any State.

Governor ROMERO BARCELO. I believe so.

Mr. Chairman, we meet today in a historic moment. Our Nation is poised with our allies to restore the right to self-determination for the Nation of Kuwait. And well over 10,000 sons and daughters of Puerto Rico, all dedicated U.S. citizens, are putting their lives on the line for that worthy cause. And with the cause of self-determination blossoming in every corner of the world from Latvia, Estonia, and Lithuania, and other nations of Eastern Europe, to the Gulf, to Latin America, Congress can do no less in Puerto Rico.

And rather than repeating my entire testimony during the other hearings, I believe I will contribute more usefully to the committee's deliberations by addressing some major issues that arose during the last Congress.

I will not be able to discuss all the ones that appear in my written testimony because I do not have enough time. But I will submit it for the record. I will, however, proceed to discuss the more important, significant ones, and the ones that have been more openly discussed in Puerto Rico.

One of them, the most important issue in the status referendum is the civic issue. In other words, that is the right to vote and the right to participate in the decisions of our nation. In short, equality.

The most discussed issue, however, became the economic issue. And in essence the economic issue boils down to asking yourselves, can the United States afford not to admit Puerto Rico as a State? Can the United States afford to maintain the so-called commonwealth?

The Treasury, the Congressional Budget Office, the Congressional Research Service, the Joint Committee on Taxation, Health and Human Services, and other agencies and the Finance Committee have confirmed that for the Federal Government, Commonwealth is exorbitantly, expensively one-sided. And if its advocates have their way, it can only become more so.

Commonwealth has become a welfare territory where the self-esteem of Puerto Ricans is being undermined because we only beg and receive, but do not contribute to the Federal Treasury. No State receives Federal advantages, much less grants and aid as generous as those paid every year to the commonwealth, without contributing to the Federal Treasury.

And just look at the table appended to my testimony and see how your State compares. There is attachment number 1, there is a table and you will see how much each State receives for every dollar they contribute and how some States receive less than what they contribute and some receive more and how much more the commonwealth receives and how much less Puerto Rico would receive per dollar contributed if it were a State.

This table was prepared by Quick Finan Associates, who submitted to the committee a study, an economic study about statehood.

Federal expenditures will grow to $9.8 billion by 1995. And as a commonwealth, not a single dollar would be paid into the United States Treasury in income taxes, inheritance taxes, excise taxes, or duties. How does that compare with Federal spending and Federal taxes in your State?

Corporations in Puerto Rico benefit in the sum of $2.1 billion annually in section 936 tax credit and growing at a rate of 10 percent per year. How do your constituents feel about the generous Federal spending program for a territory whose residents pay no Federal taxes?

The commonwealth advocates want parity in Federal social welfare programs at another $2.5 billion a year, in the unlikely event that they ever succeed in that request.

Now, ask yourself which is fairer to the Federal Government, to the citizens of the various States, this one-way street called commonwealth, or a normal two-way relationship in which Puerto Ricans contribute to the Federal Treasury and take back only what citizens of States are entitled to expect? No more, no less.

Compared to commonwealth, which is a bottomless barrel of expenditures, statehood will bring the Federal Government a $1.7 billion surplus by the year 2000.

The question is when should Puerto Rico be admitted to the Union? This is another issue that arose, and the committee entertained a prolonged debate about whether the Uniformity Clause permits statehood admission while the bill's tax transition is occurring. Professor Gewirtz of Yale, the Justice Department, and other experts said yes. Only the commonwealth's expert said no.

The committee agreed with the majority of you, and S. 712 provided for admission immediately upon the President's proclamation. The Finance Committee rewrote the provision to defer the admission date for 5 years and that is the provision currently in the bill.

In his introductory floor statement, Chairman Johnston expressed his intention to fashion a compromise amendment that would provide for expedited court review. We are pleased that the chairman recognizes the importance of prompt statehood admission if that is the choice of the people of Puerto Rico. Legislators who represented the States of Hawaii and Alaska after their admission confirmed that one of the most critical and sensitive periods for a new State, a period when full congressional representation is most essential, occurs during the years immediately following the statehood admission decision.

I have submitted an amendment for the committee's consideration to achieve that result. We hope the Energy Committee will adopt this amendment after taking account of the following factors:

First, in the unlikely event that the Energy Committee's original provisions may be unconstitutional, the Finance Committee provisions themselves are most likely unconstitutional. The Department of Justice concluded that the Uniformity Clause issues presented by the tax transition provisions arise whether the transition occurs before or after the formal proclamation of statehood.

Once Puerto Rico, by virtue of certification of a referendum choosing statehood, has been destined for statehood, Puerto Rico will have been incorporated into the United States and will have become subject to the Uniformity Clause. I have submitted as attachment number 2 a copy of the Justice Department's letter, which is in the records also.

The Department concluded: "Thus, the Uniformity Clause issues presented by the transitional tax provisions of S. 712 are not in any meaningful way affected by delaying the onset of statehood once it is decided that Puerto Rico shall become a State."

The Statehood Party shares the conclusion reached by the Energy Committee in 1989. The Uniformity Clause does not preclude the economic transition. The Supreme Court has recognized that on issues like these Congress is entitled to a presumption in favor of the constitutionality of its actions. The Justice Department and constitutional experts have agreed that Congress may provide a limited transition.

The Finance Committee wanted to eliminate all risk, but the Finance Committee provisions have not achieved their stated purpose. Only one sort of provision can do that, one which allows the equivalent of a timely declaratory judgment by the Supreme Court and, if necessary, a final opportunity for Congress for corrective action.

The proposed amendment. The Statehood Party has refined the amendment which was submitted by Senator Moynihan last year to fit within the context of the new non-self-executing bill. The proposed amendment has been sent to the committee for consideration, and at this point I would ask that the proposed amendment be put into the record.

The CHAIRMAN. Without objection.

[The information referred to follows:]

PROPOSED STATUTORY LANGUAGE FOR THE PUERTO RICO STATUS REFERENDUM ACT

(Submitted by the New Progressive Party, Jan. 18, 1991)

What follows is a draft of proposed statutory language providing for expedited judicial review of the Uniformity Clause issue. Also provided is a draft of some additional statutory language needed to conform other provisions of the bill, and a brief explanatory memorandum.

For current Section 201(b), substitute a new paragraph (b) and add new paragraphs (c) and (d) as follows:

(b) Upon the issuance of the proclamation under subsection (a), the Commonwealth of Puerto Rico (hereafter in this title also referred to as "the State") shall, effective on January I, 1993, be declared to be a State of the United States of America, and shall be declared admitted into the Union on an equal footing with the other States, subject to the provisions of paragraph (c) provided, that in the event an appeal is filed under the provisions of Section 216, the admission date will be twenty days after a favorable final judgment of the Court on that appeal.

(c) Fallback. If it is determined pursuant to Section 216 of this title that the admission date provided in paragraph (b), in conjunction with the transition provisions of either Section 213 or Section 214, is inconsistent with the United States Constitution, the Court shall stay the effect of its judgment for a period of ninety days in order to permit the Congress to amend this title so as to bring it into conformity with the Court's judgment. If Congress does not act during that period, then the Commonwealth of Puerto Rico shall, effective on January 1 of the 5th calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum Act occurs, be declared to be a State of the United States of America, and shall be declared admitted into the Union on an equal footing with the other states.

(d) The effective date of statehood shall hereafter in this title be referred to as the "admission date."

For current Section 206(a)(1)(A) substitute the following:

Within 20 days following the Supreme Court's judgment in any action filed pursuant to Section 216 of this title if that judgment leaves the admission date in section 201(b) in effect, or within 20 days following the completion of Congressional action amending this title to bring it into conformity with the Court's judgment, or no later than January 20, 1993 if there is no Supreme Court judgment, the Governor of the Commonwealth of Puerto Rico shall issue a proclamation for the election of two United States Senators and for such number of United States Representatives in Congress as provided in this Act. Such proclamation shall provide that such elections shall occur within 90 days; Provided, however, that if the fallback provisions of section 201(c) become applicable and Congress does not act as provided in that section, the Governor shall issue such proclamation not later than August 1 of the 4th calendar year following the calendar year in which the ratification under section 101(e) of the Puerto Rico Status Referendum occurs, and such proclamation shall provide that such elections shall occur on the first Tuesday in November of such 4th calendar year (or on another date during the autumn of such calendar year as may be provided by legislation enacted by the Commonwealth of Puerto Rico).

Sections 213 and 214

[Listed in Appendix A are conforming amendments to Sections 213 and 214 to provide that the proposed statutory language does not change the phase-in of social welfare benefits, the phase-in of income taxes and the phase-out of certain tax benefits provided in the draft legislation.]

[NEW] Section 216. Expedited Judicial Review

(a) No later than 60 days after the President issues the proclamation under Section 201(a) of this title, (i) any federal taxpayer or any person or entity subject to federal taxation pursuant to Section 214, (ii) any citizen of Puerto Rico, or (iii) any other person or entity who is or will be adversely affected, including any beneficiary of a Federal program described under Section 213, may bring an action in the United States District Court for the District of Puerto Rico for declaratory judgment, in junction, or both, to determine whether Section 201(b), in conjunction with the transition provisions of Sections 213 and 214, is inconsistent with the United States Constitution. Notwithstanding any other provision of law, the District Court of Puerto Rico shall have exclusive jurisdiction over such actions. Failure of any person to bring a timely action will result in foreclosure of that person's claim.

(b) Any action brought under paragraph (a) shall be heard and determined by a District Court of three judges. The district judge before whom the action is filed shall immediately notify the Chief Judge of the United States Court of Appeals for the First Circuit, who as soon as practically possible shall designate two other judges, one of whom shall be another district judge within the First Circuit not within the District of Puerto Rico and one of whom shall be a circuit judge. The judges so designated, and the judge before whom the action was filed, shall serve as members of the court to hear and determine the action. All actions brought under paragraph (a) shall be consolidated before the three-judge District Court designated under this subparagraph.

(c) An appeal may be taken directly to the Supreme Court of the United States from any order issued by the three-judge District Court in an action brought under this section, and the Supreme Court shall have jurisdiction over such direct appeal. Any such appeal shall be taken by a notice of appeal filed within 10 days after the District Court's order is entered.

(d) The District Court and the Supreme Court of the United States shall advance on the docket and expedite to the greatest extent possible the disposition of any matter brought under paragraphs (a), (b), and (c) of this section so as to permit final resolution of all questions prior to the admission date provided in section 201(b).

(e) If the Supreme Court of the United States determines that Section 201(b), in conjunction with the transition provisions of Sections 213 or 214, is inconsistent with the Constitution, the fallback provisions provided in section 201(c) shall automatically take effect.

(f) In any action brought under this section, intervention of right shall, upon timely application, extend to the head of each national political party in Puerto Rico and to each House of the United States Congress without the necessity of adopting a resolution to authorize such intervention.

EXPLANATORY MEMORANDUM

As the Committee well knows, there has been considerable debate about the effective date of statehood: should statehood be effective on January 1, 1993, or four full calendar years after final ratification? Those arguing for the prompt admission date, including representatives of the statehood movement, have plausibly argued that a four year delay after the momentous final vote for statehood would demoralize the people of Puerto Rico, breed confusion for others, and be without historic precedent in other statehood admissions. Once the momentous choice for statehood has been finally made by both the people of Puerto Rico and the United States Congress, there is every reason to get on with new political order that has been created.

Those who have argued for delaying Puerto Rico's admission date have voiced only one concern: that there is uncertainty about whether the U.S. Constitution permits a brief tax and benefit transition period after Puerto Rico formally becomes a state. For that reason, they propose delaying admission for four years until the tax transition period ends. But there is no justification for delaying the effective date of admission if the Constitution allows such a transition immediately following the admission of the new state of Puerto Rico.

A ready, practical route exists for resolving the supposed uncertainty about the constitutionality of an early effective date: a lawsuit, following finul ratification of statehood but preceding Puerto Rico's actual admission to statehood, to test the arguments of those who assert that there is a constitutional problem. The foregoing amendments to the status legislation provide explicit congressional authorization for such a lawsuit.

Section 201

The amendments to Section 201 provide that the admission date for statehood shall be January 1, 1993, with a fallback proviso if the Supreme Court concludes that the earlier admission date, in conjunction with the transition provision of Section 213 and Section 214, is inconsistent with the Constitution. The report accompanying this action should indicate that Congress has made the determination that the January 1, 1993, admission date is both appropriate as a policy matter and legally permissible as a constitutional matter. The courts are more likely to uphold what Congress has done where Congress makes clear that it has carefully assessed both the policy and constitutional question, and made carefully considered judgments.

Should the courts conclude that the January 1, 1993 admission date, in conjunction with the transition provisions of this title, are inconsistent with the Constitution, a fallback provision takes immediate effect. Congress is allowed 90 days to amend this title so as to bring it into conformity with the courts' judgment (during which time the court's judgment is stayed pursuant to Section 216(e)). But should Congress not act, section 201(c) could automatically make the admission date January 1 of the 5th calendar year following the Act's final ratification, thereby postponing the admission date four years until the transition period ends. The 90 day period for congressional action is designed to allow Congress, if it wishes, to bring this title into conformity with the courts' judgment in a way that would enable statehood to be effective earlier than the fallback date four years in the future. To give just one example: Suppose the courts conclude that there is a relatively small constitutional problem with the January 1, 1993 admission date. Congress might well conclude that it would be both unfair and imprudent to postpone statehood four full years when the specific constitutional deficiency could be readily corrected in a way that permits an earlier statehood admission date. But if Congress chooses to take no action in response to the court's ruling, the fallback admission date provided in Section 203(c) would automatically apply.

Congress in the past has specifically provided "fallback" provisions in individual statutes when the constitutionality of certain sections have been at issue during the legislative process. Section 274(f) of the Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) is a prominent recent example of such a fallback provision—and one that the Supreme Court explicitly endorsed when it struck down Section 251 of the Act. *Bowsher* v. *Svnar*. 478 U.S. 714, 735 (1986). See also the 1968 Amendment to the Northern Cheyenne Allotment Act, 82 Stat. 425, § 2, noted below.

Section 206(a)(1)(A)

The amendment to Section 206(a)(1)(A), which concerns the process for electing Senators and Representatives makes this paragraph consistent with a January 1, 1993 admission date, but keeps the Finance Committee's formulation should the fallback admission date become applicable. The dates provided reflect an attempt to address two potentially competing concerns involving activities that may take place in the limited time period between final ratification and the admission date: (1) a desire to avoid initiating the election process prior to any Supreme Court decision on the constitutionality of the January 1, 1993 admission date provided in section

216; and (2) a desire to have Senators and Representatives in place before the January 1, 1993 admission date, or as soon thereafter as possible.

Section 216

Section 216 is a new section and provides for expedited judicial review, prior to the January 1, 1993 admission date, of whether the admission date, in conjunction with the tax and benefit transition provisions, is consistent with the Constitution. Questions have been raised about whether the tax transition provisions are permitted under the Uniformity Clause and whether the benefit transition provisions are permitted under the Due Process Clause of the 5th Amendment and the Equal Protection Clause of the 14th Amendment. As noted earlier, this Committee has concluded that it is strongly in the interest of the people of both the United States and Puerto Rico to have an admission date as promptly as possible following the final ratification of statehood and also to provide a brief tax and benefit transition for the new state. After receiving the views of a broad range of people, the Committee has concluded that there is no constitutional problem with following this sensible policy course.

But there are compelling reasons to test that conclusion prior to the actual admissions date. Consider the main constitutional issue that has been raised, that the tax transition provisions in conjunction with the January 1, 1993 admissions date violate the Uniformity Clause. We strongly believe they do not. But if litigation is delayed until after Puerto Rico is actually admitted as a State, and if the courts determine that the Uniformity Clause is violated by providing a newly admitted State a tax transition period, there are only two possible remedies, each profoundly disturbing. The first would be to set aside Puerto Rico's admission as a state and postpone admission until the tax transition period ends. This alternative, effectively expelling a State from the Union and its representatives from Congress, would almost certainly be unconstitutional. See *Texas* v. *White*, 74 U.S. 700 (1868); *Powell* v. *McCormack*, 395 U.S. 486 (1969). The second possible remedy in a post-admission date lawsuit would be to adjust taxes, either immediately and dramatically raising the taxes of persons in Puerto Rico (with back taxes owed for the period since the statehood admission date) or immediately and dramatically lowering the taxes of everyone in the other 50 states (with refunds for "excess" taxes). The economic consequences for Puerto Rico of the former course would be devastating (and at odds with what all parties to the debate in Congress recognize, that a tax transition is essential for Puerto Rico) and the revenue consequences for the United States of dramatically lowering everyone else's taxes renders that course equally unimaginable.

The simplest solution to this dilemma is the lawsuit provided for in Section 216. The section provides for expedited judicial action before a three judge District Court in Puerto Rico, with an expedited direct appeal to the Supreme Court of the United States. Congress has frequently provided for specific and often expedited litigation to test the constitutionality of particular legislation it has adopted. Some prominent recent examples are: the Federal Election Campaign Act of 1971, 2 U.S.C.A. § 437h; the Flag Protection Act of 1989, 18 U.S.C.A. § 700; the Amendment to the Northern Cheyenne Allotment Act of 1926, 82 Stat. 425, § 2; and Gramm-Rudmann-Hollings itself. The text of relevant portions of each of these Congressional precedents is attached hereto. The language proposed for Section 216 parallels in significant part the language used in these earlier Congressional precedents.

There is nothing the slightest bit non-justiciable about a suit brought in advance of the actual commencement of an allegedly illegal act. Indeed, such suits are routine. Anticipatory actions for injunctions, for example, are very common. And the whole purpose of creating the declaratory judgment action many years ago was to provide "a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy." C. Wright, *Law of Federal Courts* 671 (4th ed. 1983). Courts, of course, have refused to entertain cases if the future events are "not sufficiently real or immediate," see C. Wright, *supra*, at 672 n.11, but the suit contemplated under Section 216 would raise an altogether "real and immediate" issue. Such a suit could be brought only after ratification of statehood is final; and since a January 1, 1993 effective date for admission is provided in the Act, there is no uncertainty at all about whether the allegedly illegal situation is about to occur.

The Federal Election Campaign Act of 1971, the Gramm-Rudman-Hollings Act, and the amendments to the Northern Cheyenne Allotment Act noted earlier, all provided for litigation to determine the constitutionality of the legislation in advance of actually unconstitutional actions implementing it. In fact, such litigation was brought as provided in the Act, and in all these suits the Supreme Court had no hesitance whatever in considering the cases justiciable. See *Buckley* v. *Valeo*, 424

U.S. 1 (1976) (Federal Election Campaign Act); *Bowsher* v. *Synar,* 478 U.S. 714 (1986) (Gramm-Rudman-Hollings Act); *Northern Cheyenne Tribe* v. *Hollowbreast,* 425 U.S. 649 (1976) (1968 Amendment to the Northern Cheyenne Allotment Act of 1926). Other well-known anticipatory actions include *United States Civil Service Commission* v. *National Ass'n of Letter Carriers,* 413 U.S. 548 (1973); *Pacific Gas & Electric Co.* v. *State Energy Resources Conserv. & Devel. Com'n,* 461 U.S. 190 (1983); *Duke Power Co.* v. *Carolina Environmental Study Group,* 438 U.S. 59 (1978).

Section 216 provides that certain parties are authorized to sue, and in addition provides more generally that any "adversely affected" person or entity may sue. The purpose of these provisions is to make clear that Congress seeks to go as far as the outer limits of Article III of the Constitution permit in creating standing to sue in this instance, and thereby to provide the maximum assurance that a plaintiff with standing will prosecute this lawsuit. In general, standing under Article III requires a party to allege some form of "injury" or "stake" in the litigation, however small. See, e.g., *Allen* v. *Wright,* 468 U.S. 737 (1984); *Baker* v. *Carr,* 369 U.S. 186 (1962). Congress itself—and this is the critical point in the present context—has very broad power to define who has an "injury" or "stake" and what counts as an "injury" or "stake". Thus, the Supreme Court has again and again made clear that Congress has extremely broad power to create standing. Congress can create standing in parties even where the courts would find that those parties would lack standing absent such congressional action, "even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute".[1] As the Supreme Court stated in *Sierra Club* v. *Morton,* 405 U.S. 727, 732 n.3 (1972), and has reaffirmed many times since:

> "[W]here a dispute is otherwise justiciable, the question whether the litigant is a 'proper party to request an adjudication of a particular issue . . . is one within the power of Congress to determine." [2]

In the present instance, Section 216 provides several categories of people with standing to sue. All might well have standing to raise the constitutional issues here even without any specific congressional authorization; but their standing is clearly strengthened by Congress' (1) explicitly providing for their standing as parties having an injury or stake to vindicate in the litigation; and (2) explicitly indicating in the Committee Report that Congress seeks to go to the outer limits of Article III in authorizing standing to sue in this instance.

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[1] *Warth* v. *Seldin,* 422 U.S. 490, 514 (1975). See also *Linda R.S.* v. *Richard D.,* 410 U.S. 614, 617 n.3 (1973) ("It is, of course, true that 'Congress may not confer jurisdiction on Art. III federal courts to render advisory opinions' . . . But Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute."); *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91, 100 (1979) ("Congress may, by legislation, expand standing to the full extent permitted by Art. III"); *United States* v. *Richardson,* 418 U.S. 166, 178 n.11 (1974) (although rejecting citizen and taxpayer standing in that case, Court reaffirms that "Congress could grant standing to taxpayers or citizens, or both, limited, of course, by the 'cases' and 'controversies' provision of Art. III."); *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 212 (1972) (White, J., joined by Powell and Blackmun, JJ., concurring) ("Absent the [Congressional statute], I would have great difficulty in concluding that petitioners' complaint in this case presented a case or controversy within the jurisdiction of the District Court under Art. III of the Constitution. But with that statute purporting to give [plaintiffs] the right also to sue in court, I would sustain the statute insofar as it extends standing to [plaintiffs here]").

[2] See footnote 1. Indeed, there are significant and recent cases supporting the view that Congress has the power to create standing in parties who can show no personal injury at all, but who simply sue as private attorneys general to enforce a legal requirement. *United States* v. *Hughes Helicopters. Inc.,* 714 F.Supp 1084 (1989) (one of at least 4 recent cases upholding the False Claims Act's standing provisions allowing informers to sue without showing any injury from the alleged illegality); *Metropolitan Washington Coalition for Clean Air* v. *District of Columbia,* 511 F. 2d 809, 814 n.26 (D.C. Cir. 1975) (upholding and applying Clean Air Act's provision allowing "any person" to sue without allegation of injury); *Wilder* v. *Thomas,* 854 F. 2d 605, 613 (2d Cir. 1988) (same). In *Flast* v. *Cohen,* 392 U.S. 83 (1968), Justice John Marshall Harlan, the distinguished judicial conservative and spokesman for judicial restraint, dissented from the Court's allowance of taxpayer standing in the absence of a Congressional statute; but, in famous discussion, he went on to state:

"[I]ndividual litigants have standing to represent the public interest, despite their lack of economic or other personal interests, *if Congress has appropriately authorized such suits* . . . Any hazards to the proper allocation of authority among the three branches of the Government would be substantially diminished if public actions had been pertinently authorized by Congress and the President."

Id. at 131-32 (emphasis added). While the principle articulated in these opinions is not at all necessary to support standing under Section 216, such cases show how far the courts have gone in supporting Congress' powers to create standing.

Federal taxpayers are giving standing to sue because their interests as taxpayers are at the core of what the Uniformity Clause seeks to protect. In prior Uniformity Clause cases, the typical plaintiffs have been taxpayers claiming that their taxes are inconsistent with the requirements of the Uniformity Clause. E.g., *United States* v. *Ptasynski,* 462 U.S. 74 (1983) (taxpayer challenge, under Uniformity Clause, to Crude Oil Windfall Profit Tax Act). Similarly here, for example, taxpayers within the 50 states obviously have a stake in assuring that their taxes are imposed consistently with the Uniformity Clause. Taxpayers within Puerto Rico, even those who will temporarily pay lower taxes when the tax transition period provided in Section 214 goes into effect, also have a stake in resolving the Uniformity Clause issue by declaratory judgment before the January 1, 1993 effective date; they might be subject to financially destructive orders to pay back taxes if litigation challenging the early admission date were brought and won after the admissions date.

The Uniformity Clause by itself would surely allow federal taxpayers to bring suit here; but any possible doubt would be eliminated by Congress explicitly providing that they have a cognizable stake entitling them to sue.

Secondly, Section 216 also provides standing to any persons or entities "adversely affected." This is a general catch-all standing provision, frequently used by Congress. E g., Administrative Procedure Act, 5 U.S.C. § 1365(g); Balanced Budget and Emergency Deficit Control Act (Gramm-Rudman-Hollings) 2 U.S.C. § 922(A)(2). The courts have construed this language as consistent with the Article III requirement of an "injury" or "stake" *Sierrra Club* v. *Morton,* 405 U.S. 727 (1972). And particularly where Congress has indicated that it seeks to go to the other limits of Article III in authorizing standing, the courts have broadly construed such provisions to permit a broad range of parties to sue, even where such parties might not have standing absent the congressional authorization of standing to those "adversely affected". See *Middlesex Cty. Sewerage Auth.* v. *Sea Clammers,* 453 U.S. 1, 16-17 (1981); *Trafficante* v. *Metropolitan Life Ins. Co.,* 409 U.S. 205, 209 (1972) (construing Act allowing any "person aggrieved" to bring suit as "a congressional intention to define standing as broadly as is permitted by Article III"); *id* at 212 (White, J., joined by Powell and Blackmun, J.J. concurring) (standing possible because of Congressional authorization, even though standing unlikely otherwise).

Federal taxpayers, already specifically provided for, would of course be "adversely affected." But under this provision, others would also have standing to sue. As "adversely affected" persons, beneficiaries or prospective beneficiaries of the federal programs in Section 213 would have standing to raise whether the admission date, in conjunction with the benefit transition provisions, is consistent with the 5th Amendment Due Process Clause and the 14th Amendment Equal Protection Clause. Or to give another example, voters in congressional elections would have standing to challenge the admission date since they could allege that an early and unconstitutional statehood admission date would dilute the votes of their representatives in Congress by prematurely increasing the number of Senators and Congressmen. See *Coleman* v. *Miller,* 307 U.S. 433 (1939) (standing based on alleged dilution of representatives' vote); *Baker* v. *Carr,* 369 U.S. 186 (1962) (standing based on alleged vote dilution).

A final category of persons authorized to sue are citizens of Puerto Rico. While their standing is not as self-evident as that of federal taxpayers or beneficiaries, Congress in other contexts has previously provided standing to "any person." Clean Air Act, 42 U.S.C. § 1857h-2(a); see *Metropolitan Washington Coalition for Clean Air* v. *District of Columbia,* 511 F.2d 809, 814 n.26 (D.C. Cir. 1975) (upholding this standing provision). The Supreme Court has explicitly stated that even if people generally do not have standing in their capacity as citizens, "Congress could grant standing to taxpayers or citizens, or both." *United States* v. *Richardson,* 418 U.S. 166, 178 n.11 (1974). The citizen-standing provision here would recognize that citizens of Puerto Rico have a stake sufficient to provide standing to bring a declaratory judgment concerning the effective date of statehood, including (for example) a stake in knowing definitively when the United States Constitution will apply fully in Puerto Rico. Furthermore, as noted above, there is precedent for Congress authorizing standing to persons even absent any personal stake, and the courts upholding such suits. See footnote 2 *supra.*

The Committee report should note that standing to raise a challenge to one aspect of the post-admissions date transition would allow a party to litigate the other aspects. That is because the tax and benefit provisions are interrelated. Some Committee Members, for example, justify a benefit transition because of their commitment to a tax transition. Starting with the belief that a tax transition is essential to avoid economic dislocations in Puerto Rico, they are led to embrace a benefit transition as a "symmetrical" policy that will secure a version of revenue neutrality. At least as a practical matter, therefore, a beneficiary challenging the benefit transition provisions will be able, if he or she chooses, to litigate the constitutionality of the tax transition provisions as well; the presence of the tax transition features will be part of the justification offered for the benefit provisions and therefore the constitutionality of those tax transition provisions will be brought into play.

The standing provisions of section 216(a) are supplemented by the provisions of Section 216(f) granting intervention of right to the head of each national political party in Puerto Rico and to each House of Congress. Others would have to initiate the lawsuit, but Section 216(f) assures that these specified entities would have an unconditional right to participate fully in any litigation brought, including the right to participate in oral argument. Intervenors do not have to satisfy Article III's requirements for those who initiate litigation. Rule 24(a)(1) of the Federal Rules of Civil Procedure provide an unconditional right to intervene whenever a federal statue confers such a right. Congress has provided for such intervention rights in many previous statutes. See. e.g., 28 U.S.C.A. § 2403(a) (Supp. 1989) (granting the United States or a state the right to intervene in cases where the constitutionality of an Act of Congress or a state statute is in question); 33 U.S.C. § 1365(b)(1)(B) (1982) (granting any adversely affected citizen the right to intervene in a civil or criminal action prosecuted by the Administrator of the Environmental Protection Agency).

Section 216(e) provides that the court shall stay its judgment for 90 days to permit Congress to amend this title so as to bring it into conformity with the court's judgment, as provided in Section 201(c). The courts frequently stay their judgments to give time for conforming actions to be implemented, and the Supreme Court did so in *Bowsher* v. *Synar* when it struck down provisions of Gramm-Rudman-Hollings.

The other provisions of Section 216 provide for venue, the convening off a three-judge District Court, consolidation of the actions, direct appeal to the Supreme Court, and expedited consideration of this lawsuit so as to permit final resolution of all questions prior to the January 1, 1993 admission date.

Governor ROMERO BARCELO. Thank you, sir.

The new amendment accommodates concerns raised during the Finance Committee's markup. First, Congress will not lose control of the process, as it might have in a self-executing process.

Second, the proposed amendment provides certainty as to the transition's terms and duration for the voters of Puerto Rico and for the U.S. taxpayers.

The other issue that we would like to address ourselves to is section 402's definition of "commonwealth," which we consider as extremely vague and misleading. Section 402 purports to define the relationship with the Nation that citizens of Puerto Rico would enjoy if they were to select commonwealth.

The provision is vaguely worded and thus difficult to interpret. The only public interpretation thus far has appeared in a very misleading advertisement published in Puerto Rico's press. I have submitted that as attachment 3, and you will see in that ad it says that there is a permanent union with the United States, there is sovereignty, it says, "equal to that of the States of the Union, and also the additional autonomy that corresponds to us as a people, social justice, parity with the States in Federal social programs."

There are a set of statements in that ad that are not only misleading, they are incorrect and they are not true. Throughout this legislative process, the chairman has insisted that it is essential to provide the voters of Puerto Rico with an accurate description of what each of the available status options would provide. If we are to provide accurate definitions, then section 402 must be rewritten to prevent two equally harmful forms of information:

One, interpretations of section 402 which ultimately prove to be misleading because some of section 402's provisions are unsustainable under the Constitution or other law; and two, misreadings of section 402 of the type that already have occurred in the advertisements published in Puerto Rico. The "principles of commonwealth" as set forth in section 402 describes a strange creature that, if it were an animal, would be a kind of flying amphibian, able to operate on land, in the depths of the sea, and in the air, but not well on any of them.

It suggests that Puerto Rico can, when it chooses, enjoy the status of a State, of an unincorporated territory, or of an independent Nation that has negotiated its own deal with the United States in some kind of unwritten or nonexistent compact. It has at least as much sovereignty as States have, but if that should prove confining it has something more; it has a degree of autonomy or the right to be subject only to its own laws.

That right somehow or other flows out of its location in the Caribbean Sea, among other things.

Exactly why Congress would want to adopt such a creature or what the Court will make of it if it does is difficult to say. I hope and trust that there will be substantial changes in this definition to make it more closely resemble something recognizable and comprehensible before this legislation becomes law.

Three examples will help to illustrate this problem. First, citizenship. According to advertisements published by commonwealth advocates, section 402 provides permanent U.S. citizenship, guaranteed and irrevocable, same as that of those born in the States, for Puerto Ricans under commonwealth. Whether a sitting Congress can confer such citizenship upon present and future residents of a territory which is allegedly not subject to the sovereignty of Congress was the subject of extensive debate in the 101st Congress.

Most legal experts concluded that only statehood confers permanent, irrevocable citizenship to present and future residents. Thus, the legal sustainability of this supposed new citizenship status is doubtful.

Second, parity. The same advertisements have boasted that a majority for commonwealth would confer parity with States in Federal social programs. Since neither section 402 nor any other provision of the bill would confer such parity, and since it is not available under current law, this is just not true.

The Finance Committee made it clear, as the chairman stated here today, that as it slightly increased certain Federal entitlements for Puerto Rico, that in exchange for such increase the commonwealth will from now on be subject to pay-as-you-go revenue neutrality.

Thus, any claim that this bill confers parity with the States is a gross misrepresentation. Not only does the bill fail to do that, it does quite the opposite. It establishes a dramatic new precedent, which Finance Committee members made clear during markup shall apply to the commonwealth option in the future. For any increase in Federal benefits under the commonwealth option, there shall be a corresponding decrease in commonwealth tax privileges and fiscal autonomy.

Only statehood confers parity in Federal programs, and only under statehood can Puerto Rico prosper, as Congress now inevitably erodes Puerto Rico's tax exemptions under section 936. As a State, Puerto Rico would provide additional confidence to investors and new economic opportunities not available under commonwealth.

The third example, sovereignty. The advertisement claims section 402 confers a peculiar new superior form of sovereignty upon Puerto Rico: "equal to that of the States of the Union and also the additional autonomy that corresponds to us as people."

Actually, section 402 does not confer sovereignty equal to the States. It says: "Puerto Rico enjoys sovereignty like a State to the extent provided by the Tenth Amendment." Now, you have read the Tenth Amendment. I would like to say, what does that mean?

If lawyers cannot understand it, how can the people of Puerto Rico be expected to understand that statement? This statement is the most confusing, ambiguous, and misleading of all. The Tenth Amendment, one of the least-litigated amendments, merely states the truism that: "All powers not delegated to the United States by the Constitution nor prohibited to it by the States are reserved to the States."

Now, what does that have to do with Puerto Rico, a territory? Puerto Rico is not a State. It is a territory, subject to the Constitution's Territorial Clause, under which Congress enjoys plenary power over Puerto Rico, a constitutional empowerment that Congress cannot revoke, rescind, or deny to a future Congress. And that must be made clear to the people of Puerto Rico. Otherwise, we would be misleading the voters of Puerto Rico.

How can it then be said that the commonwealth relationship can only be altered or revoked by mutual consent? We know this is not true.

This committee should pause and consider just how much sovereignty it proposes to delegate to the territory of Puerto Rico. Are you giving up your constitutional sovereignty? Is the commonwealth sovereignty equal to that of the States? Is it even greater than that of the States, as the ad implies? You must clear up and settle this issue now or this bill you are enacting will merely confuse the voters of Puerto Rico and invite endless litigation. The present ambiguity and imprecision has already allowed the Puerto Rican people to be misinformed.

The other issue we would like to tackle or discuss today, is the reference made by commonwealthers that the bill is tilted toward statehood. No, no. The bill is lopsidedly tilted for commonwealth. Even after Puerto Rico becomes a State, section 213 of the bill as drafted would limit the level of entitlement benefits in the food stamp program and the supplemental security income for the aged, blind, and disabled under the SSI program for Puerto Rican citizens below the level for citizens of other States.

Section 213, addressing the food stamp program, establishes a limit for any State whose per capita income is below 50 percent of the national per capita income of the United States. What happens is that as drafted this provision does not apply to any State of the Union. It only applies to Puerto Rico.

That is discriminatory. How can Congress limit our SSI and food stamp benefits when we become a State at levels below that of other States, yet demand from us equal tax responsibilities and equal obligations to serve our country in time of war? Is that fair?

In voting rights and other areas where important rights are at stake, courts have struck down discriminatory laws, even if they were written cleverly to appear to apply generally, but actually singled out one victim for discrimination. If the exclusionary standard established in section 213 is genuine, why not go a step further and restrict food stamp and SSI benefits for any county where half the per capita income is less than the SSI or food stamp benefits? Then that would be not as discriminatory, at least not geographically discriminatory, because it would apply to many counties, to many States in the Union.

But I suppose that the Senators and the Congressmen in those States would not be very happy with such a definition.

It is not that we want food stamps or SSI more than anybody else, no. It is that I think that if we pay our share, if we contribute and we have the same responsibilities, we should have the same benefits and not less benefits. The laws of the United States, and especially the ones dealing with problems as important as food stamps and SSI, cannot and should not have different standards for citizens of different States.

This is especially true when an act of Congress singles out one State for disparate treatment. Never before has a territory faced such obstacles in its people's quest for equality.

I do not doubt that most Members of Congress genuinely want the voters of Puerto Rico to consider all three options on an even or a level playing field. But let us address that statement: level playing field. A level playing field cannot mean that one team must have weights tied to its legs to make it run no faster than the other team. It cannot mean that the players on both sides must have identical size and ability.

Congress should be sure that the conditions under which the plebiscite are conducted are fair to both sides, and then it should allow the relative natural advantages and disadvantages of the contestants to decide the outcome.

One of the relative natural advantages of commonwealth, according to its advocates, is exemption from Federal income taxes and the section 936 tax incentive program. One of the disadvantages is the absence of a voice in the making of Federal laws that govern Puerto Rico. Another is the lack of the right of its residents to be treated as other Americans are treated under Federal entitlement programs.

They have said repeatedly that they would much rather have the tax exemptions than have the right to vote. That is what the commonwealthers say. If they believe in that, that is their prerogative.

One of the relative natural advantages of statehood is full voting representation in Congress and the right to participate in the election of the President. Another is the citizen's entitlement to be treated as those of other States are treated with respect to Federal benefits and responsibilities.

That is the other side of the coin from what many people would call a disadvantage of statehood, the obligation to pay Federal taxes and the requirement that corporations be taxed by the Federal Government in Puerto Rico as they are in Wyoming and Arkansas.

I cite these natural advantages and disadvantages to urge the committee not to burden one side or the other with unnatural disadvantages or assist one or the other with unnatural advantages in the effort to achieve a spurious balance between the two, as an example, placing a permanent cap on the amount of assistance that the poorest Puerto Ricans, the disabled, the aged, the blind, who lack social security, can receive far below what poor citizens in other States receive under the SSI.

One can see why such programs might have to be phased in, but it is simply wrong to treat entitlements as if they were political weights, to be added or subtracted here or there, and not what Congress has decided are the basic requirements of a decent society, in which all those who can pay taxes do so and those who cannot provide for themselves are assisted.

Is it that Puerto Ricans need less nutrition than their fellow Americans? Yet when it comes to taxes they must pay the same, although they receive less. Is this a level playing field?

In certain important respects, this process started out tilted against statehood. In an electoral showdown, we will have to contend with an incumbent government and some of the Nation's wealthiest corporations, all of which appear to be willing to spend large sums of money to keep their tax benefits. We will face an electorate who, if they vote for statehood, will pay Federal taxes for the first time as a result of their vote. Many of them will be told that the 936 companies will leave and that they will lose their jobs if they vote for statehood.

If you had to go home and bring a proposition like that to your voters, would you not feel that things were tilted against you?

These are the facts. Yet, after the Energy Committee reported S. 712, the commonwealth advocates had the nerve to claim that the bill was tilted against commonwealth. Why? Merely because the people of Puerto Rico will gain under statehood the same entitlement benefits now available to every U.S. citizen in the 50 States? Is that tilted? That is what we want, statehood.

They argue that Puerto Rico's poor would see the prospect of immediate enrichment and vote for their pocketbooks, vote for their pocketbooks. Is that a sin? Is that not what most people do in this Nation? Is that not why immigrants came to the Nation, to look for a better way of life? Is it wrong to vote for their pocketbooks as a consideration?

The CHAIRMAN. Governor, excuse me. I do not want to interrupt your excellent statement, but we want to allow enough time for all three statements and then to have questioning. So if you could sum up in 5 minutes.

Governor ROMERO BARCELO. Yes, definitely.

The CHAIRMAN. Excuse the interruption.

Governor ROMERO BARCELO. Nevertheless, the commonwealth side persuaded Congress, more by obduracy than with reason, to phase in the statehood benefits for Puerto Rico's poor and, now, to include the vague, misinformative language of section 402.

Nevertheless, if we go to a referendum, we are convinced that we will prevail against all practical odds. Because even with the deck stacked, these facts will endure. First, however much one might ask—might seek to enhance commonwealth, statehood ultimately confers more benefits, tangible and intangible, upon the Nation and the people of Puerto Rico.

Second, the people of Puerto Rico are attracted to the principles embodied by statehood. Full-fledged membership in the union, full voting rights and congressional representation, inalienable citizenship, freedom from discrimination, and the satisfaction and self-respect that comes when one earns entitlements by paying his obligations. There is no principle within commonwealth, enhanced or not, that matched the principles associated with statehood.

Third, all of the scare tactics have been exposed for what they are. All of the expensive private studies commissioned by commonwealth and the 936 companies have been proven wrong by the CBO study and other Federal analysts. Statehood will not ruin Puerto Rico's economy. On the contrary, it will provide a boost. And the 936 companies will not flee the island. They will stay, because their current revenues leave plenty of cushion against the loss of 936, because Puerto Rican unit costs are lower than on the mainland, and because Congress has enacted disincentives to discourage the relocation to foreign countries to avoid U.S. taxes.

The 936 companies are earning over $8 billion a year and would have to pay about $2.5 billion in taxes. They would still make over $5.5 billion. Now, tell me, do you really think that they will leave, making $5.5 billion?

Polls have shown a majority for statehood today, but this bill, unless modified, will be an added impediment for us and would promote misinformation to the people of Puerto Rico. To the fact that statehood offers more benefits and rights, the fact that it offers self respect, and equality which commonwealth does not is no reason for Congress to make statehood less for Puerto Ricans than for their fellow citizens in the 50 states.

Finally, a word of caution. The main purpose of this bill is self-determination, a right which led the revolution in Europe and Latin America last year and the defense of which has us at war in the Persian Gulf at this moment. U.S. citizens of Puerto Rico, who share our pride in the values for which this Nation stands and will share the trenches in Arabia, are entitled to no less.

We have criticized the House version for its lack of commitment and sketchy definitions and have praised Chairman Johnston and Senator Wallop for expediting this year's process. We are now worried, however, that the excess of detailed definitions contained in S. 244 could slow down this process. If the Senate version proves cumbersome, one might ask whether we should commit all of our human and economic resources to participate in the drafting of three completely defined alternatives when only one of them will be present after the plebiscite, and then Congress in the exercise of its power over territories will enact a bill for the winning formula.

Is it really efficient to engage in precise definitions for all three alternatives now if it complicates the legislative process and endangers the goal? The differences in approach between the Houses should notice that what we want is a vote—the first one since 1989. And please bear this in mind and do not let us be bogged down by a needlessly complicated process. The people of Puerto Rico are waiting to vote for equality.

Thank you.

[The prepared statement of Governor Romero Barcelo follows:]

PREPARED STATEMENT OF HON. CARLOS ROMERO BARCELO, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO

Mr. Chairman. We meet today during an historic moment. Our nation is poised with our allies to restore the right to self-determination to the nation of Kuwait.

Well over 10,000 sons and daughters of Puerto Rico, all dedicated U.S. citizens, are putting their lives on the line for that worthy cause.

Here at home, Congress is poised to fulfill its duty and grant Puerto Rico's 3.6 million U.S. citizens their right to self-determination. With the cause of self-determination blossoming in every corner of the world—from Latvia, Estonia, Lithuania and other nations of Eastern Europe, to the Gulf, to Latin America—Congress can do no less.

For the record, my name is Carlos Romero Barcelo. I am here today in my capacity as President of the New Progressive Party of Puerto Rico, the pro-statehood party. I served two terms as Governor of Puerto Rico; and two terms as Mayor of San Juan.

I am privileged to be here with Governor Luis Ferre, the founder of the New Progressive Party, and a man who has inspired generations of Puerto Ricans in our guest for political eguality. Governor Ferre, whose grandson serves in an armored division on the front line in the Gulf, will offer a few words after my remarks.

Along with a majority of Island residents, we favor the statehood option. We believe—and all polls confirm—that the People will choose statehood when given the chance to vote.

I have appeared before this and other committees often in the past two years itemizing Puerto Rico's excellent qualifications for statehood admission and exhorting Congress to leave the sidelines and join the worldwide movement to grant self-determination. Rather than repeating my entire testimony today, I believe I will contribute more usefully to the Committee's deliberations by addressing some major issues that arose during the last Congress.

However, before I discuss the main issues, let me first address myself to a housekeeping issue. The need for funds to carry out the referendum.

I. NEED FOR APPROPRIATION AUTHORIZATION

The bill passed by the House last year included an authorization for $13.5 million—about half of which would be available in equal amounts for each of the three parties—for the conduct of the plebiscite.

The Finance Committee also recognized that the referendum will impose costs—in the $2.5 to 4 million range—upon the federal government. The Finance Committee included those costs within the estimated cost of each status option—and apparently offset those costs with tax adjustments to assure revenue neutrality. (See Finance Committee Report at Page 42).

The need for a clear authorization is particularly acute in this case. During the final week of the last Congress, Chairman De Lugo conducted a floor colloquy with Appropriations Chairman Roybal on this issue. Chairman Roybal is willing to be helpful but only if the enabling legislation contains authorization language.

Earlier in my testimony I referenced the vast disparity in resources available to the incumbent party versus the statehood party. Let me say unequivocally here that, absent the sort of authorization passed last year by the House, our party will lack the resources to wage an effective campaign.

I urge the Committee to include such an authorization in S. 244. The cost of the authorization may be offset, as the Finance Committee has done, with an adjustment in each status option's tax provisions.

II. CAN THE NATION AFFORD TO ADMIT PUERTO RICO AS A STATE?

Although the most important issue is the civic issue, that is, the right to vote, the right to participate—in short—equality, the most discussed issue became the economic issue. This question arose when this Committee reviewed S. 712 in 1989. Many facts have been established conclusively since then. When the Committee now reviews those facts, I am confident you will be asking yourselves—on moral, political and economic grounds "Can the U.S. afford not to admit Puerto Rico?" "Can the U.S. afford to maintain this so-called 'Commonwealth?' "

Members in 1989 wondered whether admission of Puerto Rico as a state—with its attendant conferral of parity in federal entitlement programs—would be prohibitively expensive. We produced data which showed that commonwealth actually is the prohibitively expensive option and that, relative to commonwealth, statehood would yield for the federal government a sizeable surplus, which would increase as years go by.

Committee members were properly skeptical of the numbers then available. No authoritative federal analysis then existed. Since then, the Treasury, CBO, CRS, the Joint Committee on Taxation, HHS and other agencies and the Finance Committee have evaluated the data. All have confirmed that, for the federal government, commonwealth is exorbitantly expensively, one-sided, and if its advocates have had their way, it can only become more so. "Commonwealth" has become a welfare territory where the self-esteem of Puerto Ricans is being undermined because we only beg and receive, but do not contribute to the Federal Treasury.

No state receives federal advantages—much less, grants and aid as generous as those paid every year to the "Commonwealth"—without contributing to the Federal Treasury. Just look at the table appended to my testimony and see how your state compares. (Attachment No. 1)

The federal government spent $6.7 billion on Puerto Rico in 1989. This amount is growing at 6 to 7 percent each year. The Finance Committee estimates that, at that rate, federal expenditures will grow to $9.8 billion by 1995 and as a "Commonwealth", not a single dollar would be paid into the U.S. Treasury in income taxes, inheritance taxes, excise taxes or duties. How does that compare with federal spending and federal taxes in your state?

Don't stop your comparative analysis there. Puerto Rico receives $3 billion each year in tax benefits: cover-over of excise taxes and custom duties, forgone income tax payments, and corporations in Puerto Rico benefit in the sum of $2.1 billion annually in Section 936 tax credits (growing at a rate of 10 percent each year). How do your constituents feel about such a generous federal spending program for a territory whose residents I pay no federal taxes?

But don't stop there. The commonwealth advocates want parity in federal social welfare programs. Add another $2.5 billion a year in the unlikely event they ever succeed in that request.

Now ask yourself, which is fairer to the federal government and the citizens of the various states: this one-way street (commonwealth) or a normal two-way relationship in which Puerto Ricans contribute to the Federal Treasury and take back only what citizens of states are entitled to expect?

Compared to commonwealth, statehood will bring the federal government a $1.7 billion surplus per year by the year 2000.

III. WHEN SHOULD PUERTO RICO BE ADMITTED TO THE UNION?

This Committee entertained a prolonged debate about whether the Uniformity Clause permits statehood admission while the bill's tax transition is occurring. Professor Gewirtz of Yale, the Justice Department and other experts said yes. Only the "Commonwealth's" expert said no. The Committee agreed with the majority view and S. 712 provided for admission immediately upon the President's proclamation, followed by a period of transition in which taxes steadily increased until they reached the natural level.

The Finance Committee exercised subsequent jurisdiction and opted to avoid all risk of an unconstitutional step. That Committee rewrote the provision to defer the admission date until January 1 of the fifth calendar year after certification of the referendum (by which time the tax transition would be completed) That is the provision currently in the bill. In his introductory floor statement, Chairman Johnston expressed his intention to fashion a compromise amendment that would provide for expedited court review.

We are pleased that the Chairman recognizes the importance of prompt statehood admission if that is the choice of the people of Puerto Rico.

Legislators who represented the States of Hawaii and Alaska after their admission confirm that one of the most critical and sensitive periods for a new state—a period when full congressional representation is most essential—occurs during the years immediately following the statehood admission decision.

We believe Finance Committee members generally would have favored prompt admission into statehood but for uncertainty raised by commonwealth advocates about the constitutionality of the tax transition that would follow the admission date. Were it possible to design a mechanism that provides certainty on the constitutional issue (and to preserve the committee's revenue neutral approach), we believe it is reasonable to assume that Finance Committee members (and members of Congress generally) would be inclined not to deny the new State of Puerto Rico prompt admission.

I have submitted an amendment for the Committee's consideration to achieve that result. We hope the Energy Committee will adopt this amendment after taking account of the following factors:

A. In The Unlikely Event The Energy Comittee's Original Provisions May Be Unconstitutional, The Finance Committee Provisions Themselves Are Most Likely Unconstitutional

On July 18, 1990, the Department of Justice wrote the enclosed letter to the Finance Committee (Attachment No. 2) presenting the Department's views on S. 712. Addressing the proposal that statehood admission be deferred until after the five-year transition period, the Department concluded that the Uniformity Clause issues presented by the tax transition provisions arise whether the transition occurs before or after the formal proclamation of statehood. Once Puerto Rico, by virtue of certification of a referendum choosing statehood, has been "destined for statehood," Puerto Rico will have been "incorporated" into the United States and will have become subject to the Uniformity Clause.

The Department concluded: "Thus, the Uniformity Clause issues presented by the transitional tax provisions of S. 712 are not in any meaningful way affected by delaying the onset of statehood, once it is decided that Puerto Rico shall become a state."

The Finance Committee's report on S. 712 disregards the Department's views. But what, one might ask, would Congress do to remedy the situation if the Department's legal position were validated by the Court within a year or so after all the necessary referenda and ratification had occurred: (1) disqualify Puerto Rico retroactively or, (2) abruptly withdraw the economic transition?

The Statehood Party shares the conclusion reached by the Energy Committee in 1989: the Uniformity Clause does preclude the economic transition. The Supreme Court has recognized that, on issues like these, Congress is entitled to a presumption in favor of the constitutionality of its actions. The Justice Department and constitutional experts have agreed that Congress may provide a limited transition. The Finance Committee wanted to eliminate all risk. But the Finance Committee provisions have not achieved their stated purpose. Only one sort of provision can do that: one which allows the equivalent of a timely declaratory judgment by the Supreme Court and, if necessary, a final opportunity for corrective congressional action.

B. Proposed Amendment

Last year Senator Moynihan introduced an amendment in the Finance Committee mark-up designed to provide for expedited judicial review and, if constitutional, for prompt statehood admission. Unfortunately, owing to severe time constraints, Senator Moynihan was unable to present his idea until the day of mark-up. It was unfamiliar to his colleagues and was voted down.

The Statehood Party has refined that amendment to fit within the context of the new non-self-executing bill. The proposed amendment has been sent to the Committee for consideration. (At this point I would ask that the proposed amendment be put into the record). The new amendment accommodates concerns raised during the Finance Committee mark-up, including the following.

First, Congress will not lose control of the process, as it might have in a self-executing process.

This year's bill requires congressional certification after the initial plebiscite and a second referendum in Puerto Rico to ratify the bill voted by Congress certifying the result of the first plebiscite. The proposed amendment itself provides for yet a third opportunity for Congress to review the situation—and, if it wishes, to enact remedies—should the Court find any element of the transition unconstitutional. Thus, Congress will be engaged in decision-making and will not lose control at any time during the process.

Second, the proposed amendment provides certainty as to the transition's terms and duration for the voters of Puerto Rico and for the U.S. corporate taxpayers. During last year's consideration, some members of the Finance Committee found the proposal then offered to be sufficiently ambiguous to deprive affected parties of certainty. That problem, to the extent that it existed then, has been corrected. Whether Puerto Rico is admitted on January 1, 1993 or several years later, the bill will make clear Congress' commitment that a transition will occur in four equal annual increments during a five-year period.

IV. SECTION 402'S DEFINITION OF COMMONWEALTH IS VAGUE AND MISLEADING

Section 402 purports to define the relationship with the Nation that citizens of Puerto Rico would enjoy if they were to select commonwealth. The provision is vaguely worded and, thus, difficult to interpret. The only public interpretation thus far has appeared in a very misleading advertisement published in Puerto Rico's Press. (See Attachment No. 3).

Throughout this legislative process, the Chairman has insisted that it is essential to provide the voters of Puerto Rico with an accurate description of what each of the available status options would provide. If we are to provide accurate definitions, then Section 402 must be rewritten to prevent two equally harmful forms of information: (1) interpretations of section 402 which ultimately prove to be misleading because some of Section 402's provisions are unsustainable under the Constitution or the law; and, (2) misreadings of Section 402: the type that already have occurred in the advertisements published in Puerto Rico.

The "principles of Commonwealth" section, Section 402(a), describes a strange creature that, if it were an animal, would be a kind of flying amphibian—able to operate on land, in the depths of the sea, and in the air; but not well on any of them. It suggests that Puerto Rico can, when it chooses, enjoy the status of a state, of a non incorporated territory, or of an independent nation. It has negotiated its own deal with the United States, in some kind of unwritten or nonexistent compact. It has at least as much sovereignty as states have, but if that should prove confining, it has something more—it has a degree of "autonomy", or the right to be subject only to its own laws. That right somehow flows out of its location in the Caribbean Sea, among other things.

Exactly why Congress would want to adopt such a creature, or what the court will make of it if it does, is difficult to say. I hope and trust that there will be substantial changes in this definition to make it more closely resemble something recognizable and comprehensible before their legislation becomes law.

Three examples will help to illustrate the problem.

First, citizenship: according to advertisements published by commonwealth advocates, Section 402 provides permanent U.S. citizenship "guaranteed and irrevocable, same as that of those born in the States"—for Puerto Ricans under Commonwealth. Whether a sitting Congress can confer such citizenship upon present and future residents of a territory not subject to the sovereignty of Congress was the subject of extensive debate in the 101st Congress. Experts agreed that, at a minimum, so long as Puerto Rico remains in territorial status, Congress may at any time determine the citizenship of unborn generations. Some minority opinion notwithstanding, most legal experts concluded that only statehood confers permanent, irrevocable citizenship to present and future residents. Thus, the legal sustainability of this supposed new citizenship status is doubtful.

Second, parity: the same advertisements have boasted that a majority vote for commonwealth would confer "parity with states in federal social programs." Since neither of Section 402 nor any other provision of the bill would confer such parity and since it is not available under current law, this is just not true.

Actually Section 402(b) states that the policy of the United States shall be to enable the people of Puerto Rico "to seek fair treatment in federal programs": a right which they currently enjoy but, under this bill, at a steeply higher price. The Finance Committee made it clear as it slightly increased certain federal entitlements for Puerto Rico that, in exchange for such increases the commonwealth will from now on be subject to "pay as you go" revenue neutrality.

> "Under the commonwealth option, the Committee believes it is appropriate to offset the costs of increased federal spending—by modification of the tax benefits accorded under Section 936, and reducing, as necessary, the cover over of U.S. taxes and customs duties to Puerto Rico. Thus, the costs of any increased benefits under the commonwealth option are entirely funded by the Puerto Rico government and 936 U.S. companies operating in Puerto Rico." (Finance Committee Report, page 14).

The claim that this bill confers full parity is patently untenable. It would cost the federal government an additional $2.5 billion per year to provide full parity. Under the Finance Committee's revenue neutral framework, the offset required to finance this new cost would eliminate the income tax exemption to Section 936/corporations. Clearly, the bill does not contemplate parity. But because of its highly technical and ambiguous language it causes confusion.

Thus, any claim that this bill confers parity with the states is a gross misrepresentation. Not only does the bill fail to do that. It does quite the opposite. It establishes a dramatic new precedent, which Finance Committee members made clear during mark-up shall apply to the "commonwealth option" in the future: for any increase in federal benefits under the commonwealth option, there shall be a corresponding decrease in commonwealth tax privileges and fiscal autonomy.

Only statehood confers parity in federal programs. And only under statehood can Puerto Rico prosper as Congress now inevitably erodes Puerto Rico's tax exemptions under Section 936, which according to Commonwealth advocates is essential for the Commonwealth's economic growth. As a state, Puerto Rico will provide additional confidence to investors and new economic opportunities not available under Commonwealth.

The third example—the "sovereignty" provision—combines both objectionable features of Section 402: its terms have been misrepresented. Furthermore, it is unsustainable as a matter of law.

The advertisement claims Section 402 confers a peculiar new superior form of Sovereignty upon Puerto Rico: "equal to that of the states of the Union and also the additional autonomy that corresponds to us as a People."

Actually, Section 402 doesn't confer sovereignty "equal to the states." It says "Puerto Rico enjoys sovereignty, like a state, to the extent provided by the Tenth Amendment." Now, what does that mean? If lawyers don't understand, how can the people be expected to understand. This statement is the most confusing, ambiguous and misleading of all. The Tenth Amendment—one of the least litigated amendments—merely states a truism: that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states.

Puerto Rico is not a State. It is a territory, subject to the Constitution's Territorial Clause—under which Congress enjoys plenary power over Puerto Rico. A constitutional empowerment that Congress cannot revoke, rescind or deny a future Congress.

To the extent that Section 402 confers "sovereignty," it does so in a very qualified sense. It is settled in the law. Congress may delegate power to territories subject to constitutional limits to which all lawmaking is subservient, and subject to the power of Congress at any time to revise, alter, or revoke the authority granted.

How can it then be said that the "Commonwealth relationship" can only be altered or revoked by mutual consent? We know this is not the true.

This Committee should pause and consider just how much sovereignty it proposes to delegate to the territory of Puerto Rico. Are you giving up your Constitutional sovereignty? Is the commonwealth's sovereignty "equal to" that of the states? Is it even greater than that of the states, as the ad implies? You must clear-up and settle this issue now or the bill you are enacting will merely confuse the voters of Puerto Rico and invite endless litigation. The present ambiguity and imprecision has already allowed the Puerto Rican people to be misinformed.

It is imperative that Congress carefully analyze the constitutionality of the provisions of Section 402 and the validity of the claims made about Section 402 in the newspaper ads, to ensure that whatever provision finally emerges is clear, unambiguous, and enforceable under law. You must also make sure that the limitations upon its scope are properly understood by Puerto Rico's voters.

V. THIS BILL IS LOP-SIDEDLY TILTED AGAINST STATEHOOD

To start with, I would like to highlight an instance of "tilt" in the current bill.

Even after Puerto Rico becomes a State, Section 213 of the bill as drafted would limit the level of entitlement benefits, in the food stamp program and the Supplemental Security Income for the Aged, Blind and Disabled (SSI) Program, for Puerto Rican citizens below the level for citizens of other States. Section 213(c)(3), addressing the food stamp program, establishes a limit for "any state whose per capita income is below 50 percent of the national per capita income of the United States." As drafted, this provision only applies to the U.S. citizens of Puerto Rico. Section 213(b)(2), addressing the SSI program, would limit benefits to a percentage of the income of the State's citizens; again, the only citizens affected by this limit would be the people of Puerto Rico.

How can Congress limit our SSI and food stamp benefits when we become a state, at levels below that of other states, yet demand from us equal tax responsibilities and equal obilgations to serve our country in time of war.

In voting rights and other areas where important rights are at stake, courts have struck down discriminatory laws: even if they were written cleverly to appear to apply generally, but actually singled out one victim for discrimination. If the exclusionary standard established in Section 213 is genuine, why not go a step further and restrict food stamp and SSI benefits for any county with low per capita income.

The laws of the United States, and especially ones dealing with programs as important as food stamps and SSI, cannot—and should not—have different standards for citizens of different states particularly if those standards are intended, as

213(c)(3) and 213(b)(2) are intended, to be permanent. This is especially true when an Act of Congress singles out one State for disparate treatment.

Never before has a territory faced such obstacles in its People's quest for equality. I don't doubt that most members of Congress genuinely want the voters of Puerto Rico to consider all three options on an even playing field. But, this is certainly far from an even playing field.

Let me address this issue of an "even playing field." The chairman in his introductory statement said that "This principle is important to assure that the referendum results are not distorted by an expectation of greater Federal payments under one or another of the options."

I can understand the concern that the Congress should not tilt the plebiscite one way or the other, so as to determine the outcome in advance. As every American president since Truman has said, the question of the relationship between Puerto Rico and the United States is one that Puerto Ricans should decide in the first instance.

But a level playing field cannot mean that one team must have weights tied to its legs, to make it run no faster than the other team. It can't mean that the players on both sides must have identical size and ability. Congress should be sure that the conditions under which the plebiscite is conducted are fair to both sides; and then it should allow the relative natural advantages and disadvantages of the contestants to decide the outcome.

One of the relative natural advantages of commonwealth, according to its advocates, is exemption from Federal income taxes, and the Section 936 tax incentive program. One of the disadvantages is the absence of a voice in the making of Federal laws that govern Puerto Rico. Another is the lack of the right of its residents to be treated as other Americans are treated under Federal entitlement programs.

One of the relative natural advantages of statehood is full voting representation in Congress and the right to participate in the election of the President. Another is its citizens' entitlement to be treated as those of other states are treated, with respect to Federal benefits. That is the other side of the coin from what many people would call a disadvantage of statehood—the obligation to pay Federal taxes, and the requirement that corporations be taxed by the Federal government in Puerto Rico as they are in Wyoming and Arkansas.

I cite these natural advantages and disadvantages to urge the committee not to burden one side or the other with unnatural disadvantages, or assist one or the other with unnatural advantages, in the effort to achieve a spurious balance between the two. As an example, placing a permanent cap on the amount of assistance that the poorest Puerto Ricans—the disabled, the aged who lack social security—can receive, far below what poor citizens in other states receive under the SSI program. Another example is a permanent cap on the food stamp program. One can see why such programs might have to be phased in. But it is simply wrong to treat entitlements as if they were political weights, to be added or subtracted here or there, and not what Congress has decided are the basic requirements of a decent society in which all those who can pay taxes do so, and those who cannot provide for themselves are assisted.

In certain important respects this process started out "tilted" against statehood. In an electoral showdown, we will have to contend with an incumbent government and some of the Nation's wealthiest corporations—all of which appear to be willing to spend large sums of money to keep their tax benefits. We'll face an electorate who, if they vote for statehood, will pay federal taxes for the first time. Many of them will be told that the 936 companies will leave and that they'll lose their jobs if they vote for statehood. If you had to go home and bring a proposition like that to your voters, would you not feel that things were "tilted" against you?

These are the facts. Yet after the Energy Committee reported S. 712 the commonwealth advocates had the nerve to claim the bill was tilted against commonwealth. Why? Merely because the people of Puerto Rico will gain, under statehood, the same entitlement benefits now available to every U.S. citizen in the 50 states. They argued that Puerto Rico's poor would see the prospect of immediate enrichment and vote their pocketbooks. Remember who's "getting rich" here: the Puerto Rican citizens now subject to discrimination in U.S. entitlements largely are the elderly poor, the poor children, and the blind and disabled.

Nevertheless, the commonwealth side persuaded Congress—more by obduracy than with reason—to phase in statehood benefits for Puerto Rico's poor and, now, to include the vague misinformative language of Section 402.

The political deck was stacked against statehood at the start and, with each concession in the language of the bill to commonwealth, it has gone from bad to worse.

The bill is right now very unbalanced, because it purports to deny to the State of Puerto Rico—what all 50 states are entitled to by law.

Nevertheless, if we go to a referendum, we believe we will prevail against all practical odds, because, even with the deck stacked, three facts will endure.

First, however much one might seek to enhance commonwealth, statehood ultimately confers more benefits—tangible and intangible—upon the Nation and the People of Puerto Rico.

Second, the People of Puerto Rico are attracted to the principles embodied by statehood: full-fledged membership in the Union, full voting rights and congressional representation, inalienable citizenship, freedom from discrimination, and the satisfaction and self-respect that comes when one earns entitlements by paying his obligations. There is no principle within commonwealth, enhanced or not, that matches the principles associated with statehood.

Third, all of the scare tactics have been exposed for what they are. All of the expensive private studies commissioned by commonwealth and the 936 companies have been proven wrong by the CBO study and other federal analyses. Statehood will not ruin Puerto Rico's economy. On the contrary, it will provide a boost. There might be at most, a brief slow-down in economic growth, followed by a renewed upward stronger movement. That is not a difficult price to pay for equality, pride and self-respect.

And the 936 companies will not flee the island. They will stay because their current returns leave plenty of cushion against the loss of Section 936, because Puerto Rican unit costs are lower than on the mainland and because Congress has enacted disincentives to discourage their relocation to foreign countries to avoid U.S. taxes. The 936 companies are earning over $8 billion per year and would have to pay about $2.5 billion in taxes. They will still make over $5.5 billion. Do you think they will leave?

Polls show a majority for statehood today. But this bill, unless modified, will be an added impediment for us and will promote misinformation to the people of Puerto Rico.

The fact that statehood offers more benefits and rights; the fact that it offers self-respect and equality which commonwealth does not, is no reason for Congress to make statehood less for Puerto Ricans than for their fellow-citizens in the fifty (50) states.

CONCLUSION

Finally, a word of caution. The main purpose of this bill is self-determination. A right which led to revolution in Europe and Latin America last year and the defense of which has us at war in the Persian Gulf at this precise moment.

The U.S. citizens of Puerto Rico, who share our pride in the values for which this nation stands and who share the trenches in Arabia, are entitled to no less.

Last year, a similar Senate proposal was defeated by time while an irreconcilable version passed the House unanimously.

We have criticized the House version for its lack of commitment and sketchy definitions and we have praised Chairman Johnston and Senator Wallop for expediting this year's process. We are worried that the excess of detailed definitions contained in S. 244 could slow down this process.

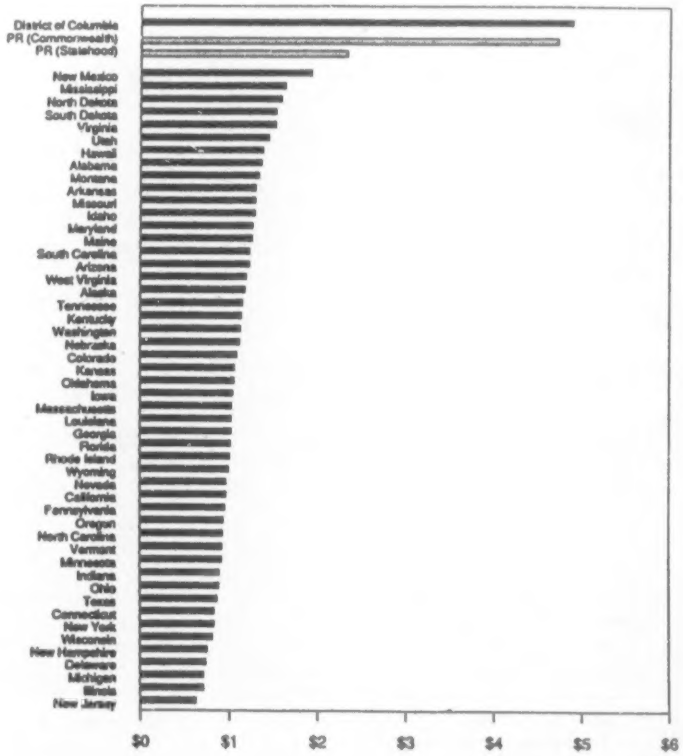
If the Senate version proves cumbersome, one might ask whether we should commit all of our human and economic resources to participate in the drafting of three (3) completely defined alternatives when only one of them will be present after the plebiscite and then Congress, in the exercise of its power over territories, will enact a bill for the winning formula.

Is it really efficient to engage in such an exercise now, if it complicates the legislative process and endangers the goal? The differences in approach between the houses should serve notice that what we want is a vote. The first one since 1898!

Please bear this in mind and do not let us be bogged down by a needlessly complicated process.

ATTACHMENT No. 1

Figure 1
Dollars of Federal Expenditure per One Dollar of Revenue, FY1987



Quick Finan Associates

Attachment No. 2

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 18, 1990

The Honorable Lloyd Bentsen
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510-6200

Dear Mr. Chairman:

This presents the views of the Department of Justice on the proposed revisions by the Senate Finance Committee to S. 712, the Puerto Rico Status Referendum Act. Our review has been limited to Uniformity Clause issues; we have not addressed other potential constitutional issues. Moreover, our review is based on a general description of the alternatives under consideration. We have not seen specific legislative language. Accordingly, our comments are general in nature and may change depending on the specific language chosen by the Committee.

1. Delay of Onset of Statehood

One proposal under the statehood option is to defer admission of Puerto Rico as a state until the end of a five-year transition period during which the application of the Internal Revenue Code would be phased in and the benefits of section 936 would be phased out. The apparent purpose of this proposal is to avoid the constitutional concerns that the tax transition provisions create under the Uniformity Clause of the Constitution. U.S. Const. Art. I, § 8, cl. 1 ("The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.").

We believe the Uniformity Clause issues presented by the tax transition provisions arise whether the transition occurs before or after the formal proclamation of statehood, so long as the legislation provides that the choice of statehood in the referendum becomes self-executing. The Supreme Court has held that whether or not the Uniformity Clause is applicable to taxation within a territory depends on whether or not that territory has been "incorporated" into the United States. An "unincorporated" territory is deemed not part of "the United States" within the meaning of the Uniformity Clause and is thus not subject to the clause; an "incorporated" territory forms part of the United States and is subject to the requirements of the clause.

The leading case for the incorporated territory/unincorporated territory distinction is *Downes* v. *Bidwell*, 182 U.S. 244 (1901). In *Downes*, the Court held that non-uniform tax treatment for Puerto Rico did not violate the requirements of the Uniformity Clause because Puerto Rico had not been incorporated as part of the United States. The concurring opinion of Justice White has come to be accepted as the controlling rationale of the case. *See Torres* v. *Puerto Rico*, 442 U.S. 465, 468-69 (1979); *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 599-600 n.30 (1976); *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 5 (1955); *Balzac* v. *Porto Rico*, 258 U.S. 298, 311-313 (1922). Justice White's opinion reasons as follows:

> In the case of the territories, as in every other instance, when a provision of the Constitution is invoked, the question which arises is not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable.
>
> . . . As Congress derives its authority to levy local taxes for local purposes within the territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empowering Congress "To lay and collect Taxes, Duties, Imposts and Excises," and is not restrained by the requirement of uniformity throughout the United States. But the power, just referred to, as well as the qualification of uniformity, restrains Congress from imposing an impost duty on goods coming into the United States from a territory which has been incorporated into and forms a part of the United States.

Downes, 182 U.S. at 292 (White, J., concurring).

For purposes of the applicability of the Uniformity Clause, the question then becomes whether a territory has been "incorporated" into the United States. Though the exact parameters of this incorporation doctrine have been the subject of continuous debate in Supreme Court opinions, it is clear that at least one dispositive factor in determining that a territory has been "incorporated" is that it is anticipated or intended that the territory will eventually become a state. *United States* v. *Verdugo-Urquidez*, 58 U.S.L.W. 4263, 4266 (U.S. Feb. 28, 1990) (unincorporated territory is "one not clearly destined for statehood"); *Examining Board* v. *Flores de Otero*, 426 U.S. 572, 599 n.30 (1976) (incorporated territories are "those Territories destined for statehood from the time of acquisition" and unincorporated territories are "those Territories not possessing that anticipation of statehood."); *Granville-Smith* v. *Granville-Smith*, 349 U.S. 1, 5 (1955) ("A vital distinction was made between 'incorporated' and 'unincorporated' territories. The first category had the potentialities of statehood like unto continental territories. . . . The second category described possessions of the United States not thought of as future States."). *See also Downes*, 182 U.S. at 293-294 (White, J., concurring).

Other cases discuss the question of "incorporation" in terms of whether Congress's *intention* to make a territory an incorporated territory. *Cf. Balzac* v. *Porto Rico*, 258 U.S. 298, 311-313 (1922); *but see Rassmussen* v. *United States*, 197 U.S. 516, 523-25 (1905) (looking to objective criteria as indicia of intention to incorporate a territory). But while explicit statements of intention "to incorporate" or not to incorporate may be relevant where a territory is *not* anticipated to become a state, it is clear that where eventual statehood is contemplated, the relevant intention is not any expression of intention "to incorporate" or not to incorporate, but the intention that the territory be made a state.

Accordingly, we believe that once Puerto Rico, by virtue of certification of a referendum result choosing the statehood option, has been "destined for statehood," *Verdugo-Urquidez*, 58 U.S.L.W. at 4266, *Flores de Otero*, 426 U.S. at 599 n.30, by virtue of the choice made in the referendum, it will have become "incorporated" into the United States for purposes of Uniformity Clause analysis. Thus, the Uniformity Clause issues presented by the transitional tax provisions of S.712 are not in any meaningful way affected by delaying the onset of statehood, once it is decided that Puerto Rico shall become a state.

2. *Phase-Out of Section 936 Benefits; Phase-In of Tax Liability*.

As noted in Assistant Attorney General Peterson's testimony before the Senate Finance Committee on November 14, 1989, we believe that the retention and phase-out of the section 936 preference as a transitional measure could satisfy the requirements of the Uniformity Clause, if supported by adequate Congressional findings that such a transitional period was necessary to take into account localized problems unique to Puerto Rico — particularly, the economic dislocation that would result to an already economically depressed state from a sudden and immediate termination of the section 936 benefits — and if narrowly tailored to the goal of avoiding such severe dislocation. There is no evidence that the Uniformity Clause was intended to so constrain the exercise of Congress' power under Article IV to admit new states to the Union as to disable Congress from fashioning reasonable and necessary transition measures. Assistant Attorney General Peterson emphasized that such a provision "must represent a direct, tailored response to a geographically isolated problem: namely, the economic dislocation that would otherwise occur upon Puerto Rico's admission to the Union."

We again emphasize the necessity for Congress to make detailed additional findings supporting its determination as to any transitional tax measure it adopts. This analysis applies with equal, if not increased, force to the proposed phase in of tax liability generally. Such a phase-in of the federal income tax would have much broader application than a phase-out of benefits under section 936. As we have indicated previously, the greater the number and value of tax transition benefits provided to Puerto Rico under the statehood option, and the longer the transition period, the more difficult will be the task of making findings that would support a conclusion that the measures are narrowly tailored to addressing a unique, geographically isolated problem and do not constitute an "undue preference" for Puerto Rico in violation of the Uniformity Clause.

The Office of Management and Budget has advised that it has no objection to the submission of this report to the Congress from the standpoint of the Administration's program.

Sincerely,

Bruce C. Navarro

Bruce C. Navarro
Deputy Assistant Attorney General

Attachment No. 3 newspaper advertisement appearing in the [illegible] 1990 edition of El Nuevo Dia

NEW COMMONWEALTH ADVANCES

New Senate draft reaffirms and improves New Commonwealth

What does the new bill say?

> SECTION 402.
>
> (Includes text of Section 402 of Senate draft)

New Commonwealth: Singular Juridical Status.
Not a territory, not a state of the Union, nor a republic.

AMERICAN CITIZENSHIP: guaranteed and irrevocable, same as that of those born in states.

PERMANENT UNION: with the United States.

BILATERAL RELATION: pact between Puerto Rico and the United States is irrevocable except by mutual consent.

SOVEREIGNTY: equal to that of the states of the Union and also the additional autonomy that corresponds to us as a People.

SOCIAL JUSTICE: parity with the states in federal social programs.

PUERTORICANNESS: Preservation of our identity as a People, our language and our culture.

STATEHOOD SINKS

New Senate draft hits statehood strongly

POSTPONED FOR FIVE YEARS: "Statehood Now" petition by NPP rejected. Statehood would not be effective until the end of a five year period during which federal taxes would be collected.

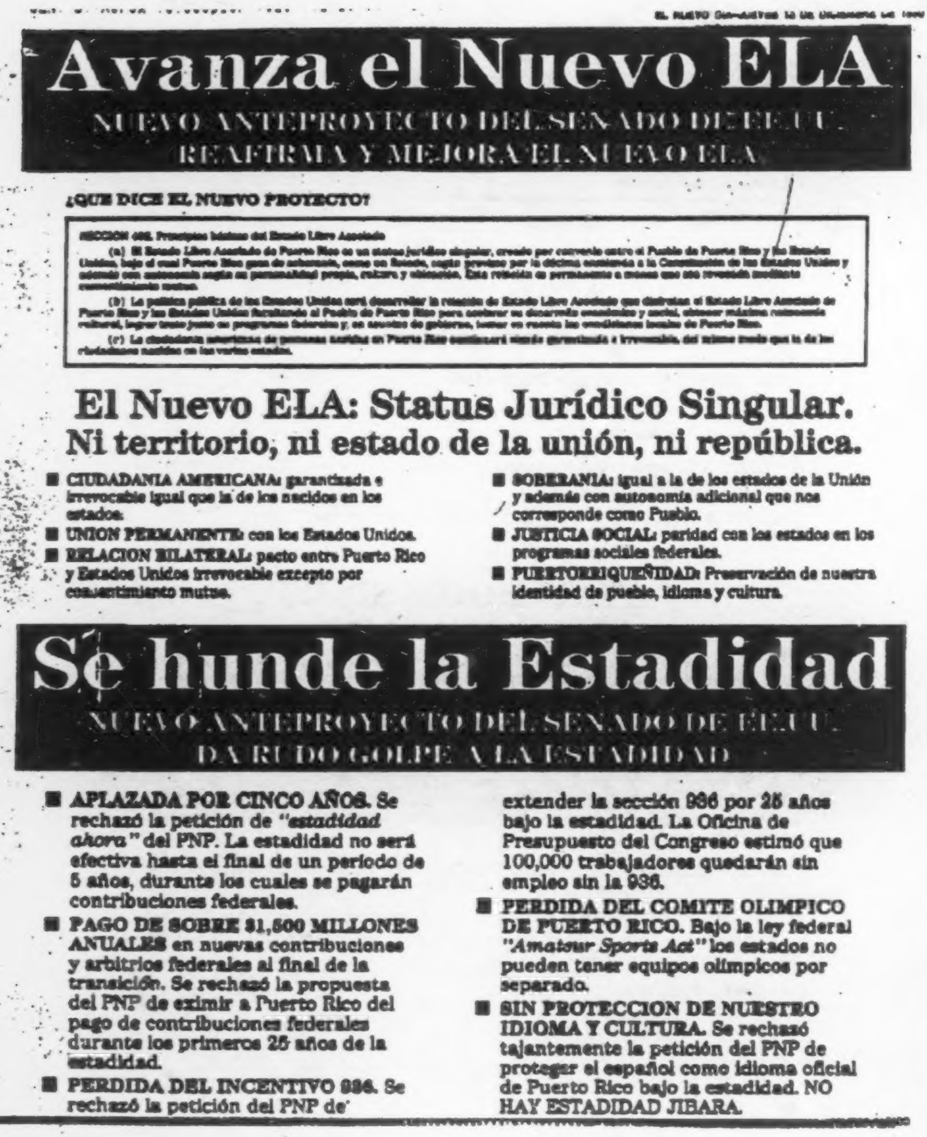
PAYMENT OF OVER $1.5 BILLION YEARLY in new federal taxes at the end of the transition. The NPP's proposal to exempt Puerto Rico from payment of federal taxes during the first 25 years of statehood was rejected.

LOSS OF 936 INCENTIVE. The NPP's petition to extend Section 936 for 25 years of statehood was rejected. The Congressional Budget Office estimated that 100,000 workers will lose their jobs without 936.

LOSS OF PUERTO RICO OLYMPIC COMMITTEE. Under the federal Amateur Sports Act, states cannot have separate Olympic committees.

NO PROTECTION FOR OUR CULTURE AND LANGUAGE. The NPP's petition to protect Spanish as our official language under statehood was rejected out of hand. THERE IS NO AUTOCTONOUS STATEHOOD.

(Paid political advertisement)



Avanza el Nuevo ELA

NUEVO ANTEPROYECTO DEL SENADO DE EE.UU. REAFIRMA Y MEJORA EL NUEVO ELA

¿QUE DICE EL NUEVO PROYECTO?

El Nuevo ELA: Status Jurídico Singular.

Ni territorio, ni estado de la unión, ni república.

- **CIUDADANIA AMERICANA:** garantizada e irrevocable igual que la de los nacidos en los estados.
- **UNION PERMANENTE:** con los Estados Unidos.
- **RELACION BILATERAL:** pacto entre Puerto Rico y Estados Unidos irrevocable excepto por consentimiento mutuo.
- **SOBERANIA:** igual a la de los estados de la Unión y además con autonomía adicional que nos corresponde como Pueblo.
- **JUSTICIA SOCIAL:** paridad con los estados en los programas sociales federales.
- **PUERTORRIQUEÑIDAD:** Preservación de nuestra identidad de pueblo, idioma y cultura.

Se hunde la Estadidad

NUEVO ANTEPROYECTO DEL SENADO DE EE.UU. DA RUDO GOLPE A LA ESTADIDAD

- **APLAZADA POR CINCO AÑOS.** Se rechazó la petición de "*estadidad ahora*" del PNP. La estadidad no será efectiva hasta el final de un periodo de 5 años, durante los cuales se pagarán contribuciones federales.
- **PAGO DE SOBRE $1,500 MILLONES ANUALES** en nuevas contribuciones y arbitrios federales al final de la transición. Se rechazó la propuesta del PNP de eximir a Puerto Rico del pago de contribuciones federales durante los primeros 25 años de la estadidad.
- **PERDIDA DEL INCENTIVO 936.** Se rechazó la petición del PNP de extender la sección 936 por 25 años bajo la estadidad. La Oficina de Presupuesto del Congreso estimó que 100,000 trabajadores quedarán sin empleo sin la 936.
- **PERDIDA DEL COMITE OLIMPICO DE PUERTO RICO.** Bajo la ley federal "*Amateur Sports Act*" los estados no pueden tener equipos olímpicos por separado.
- **SIN PROTECCION DE NUESTRO IDIOMA Y CULTURA.** Se rechazó tajantemente la petición del PNP de proteger el español como idioma oficial de Puerto Rico bajo la estadidad. NO HAY ESTADIDAD JIBARA.

The **Chairman**. Thank you very much, Governor.

Accompanying Governor Carlos Romero Barcelo is former Governor Ferre, and I want to be very evenhanded and not allow one party to have two witnesses where the others have only one. On the other hand, I am greatly constrained out of respect and affection for Governor Ferre to hear just a word from him.

Governor, would you just say hello to the committee and let me put your statement in and be satisfied with my commendations for your long service to Puerto Rico? I just want to be very evenhanded here, and I fear that unless the other two parties want to do that, I think it is probably—now, they are saying it is all right. So I think that is very nice.

So go ahead with it, if you can give us a short statement.

STATEMENT OF HON. LUIS A. FERRE, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO

Governor **Ferre**. Thank you, Mr. Chairman and members of the Committee. I am Luis A. Ferre and former Governor of Puerto Rico, and I am very grateful for the way Senator Johnston has carried the ball for this plebiscite for Puerto Rico up to now. We are very grateful for the—with the persistent manner in which he has forged through the difficulties to try to have Puerto Rico express itself on the very sound American principle of self-determination.

We are here because we were brought into the Nation in 1898 by the American forces. We have been together with all the Americas for almost 100 years. We have worked together. We have fought together.

Now, this time that the decision is to be made if we are going to be accepted as equals within the Nation, we feel that that decision was made in 1917 when we were given the American citizenship that sealed the pact between Puerto Rico and the United States to open the doors to statehood to Puerto Rico.

And ever since, we have continued to fight for statehood and equality. That has been the objective of my life. I have been travelling back and forth to Washington for 50 years to obtain statehood for Puerto Rico, because I think it is fair to give Puerto Ricans the equality that was promised originally when we became part of the United States.

There is no question now whether we can or should not be a State. That I think is already settled. That was settled when we were admitted together into the Nation. That was settled when we went to war together with you to protect our democracy.

And I say in my statement here, I have now a grandson in Saudi Arabia. He is in the First Armored Division on the border line of Kuwait. Now, when he comes back from that ordeal, when all the Puerto Ricans come back from that ordeal, will I be able to tell him that he has gone there to fight for the freedom of our country—for the freedom of other people or is he going to come back as a disenfranchised American subject to the territorial clause of the Constitution?

I do not think that it is fair. I do not think that is fair to let these men who go there and risk their lives and went through that awful ideal to protect freedom for others, to protect freedom for us and to bring peace to the world, that they should continue to be disenfranchized American citizens.

Because they are American citizens. You made them American citizens. You welcomed them as American citizens, and therefore—and we have acted as American citizens. At no time have we acted in a way that was contrary to being a good American. We have done our job. We have lived up to our expectations, to your expectations, and therefore, we have, I think, the right to become an equal to all of you.

The fear that there might not be a large majority can be discarded, because even if we were to get 55 percent majority for statehood and the other 30 percent were for commonwealth, there will never be a conflict between commonwealthers and statehooders, because we all want permanent union and American citizenship, so that fear is completely out of the question.

The important thing is that we should have the right to vote in Congress and the right to vote for the President. Because that is the only way in which we can really be equal Americans. And I do not think there is any room in this country for unequal Americans. We should all be equal, because we all put up our lives equally. Speaking Spanish or speaking English, we all go to war together to fight for our country, and we have done so—we have done so with great loyalty and we expect you to give us the right to enter your family on equal basis.

Thank you, gentlemen.

[The prepared statement of Governor Ferre follows:]

PREPARED STATEMENT OF HON. LUIS A. FERRE, FORMER GOVERNOR, COMMONWEALTH OF PUERTO RICO

Mr. Chairman and distinguished members of the Energy Committee: My name is Luis A. Ferre. I served as Governor of Puerto Rico from 1969 to 1973, and I am a graduate of the Massachusetts Institute of Technology. On June 1, 1989, I testified before this Committee on behalf of the right of self determination of the 3.5 million U.S. citizens of Puerto Rico and described to you my pilgrimage of 53 years demanding the right of Puerto Rico to become a state of the Union, beginning with my long trip in those days to oppose Senator Tydings' bill for Independence. I travelled by plane from Puerto Rico to Santo Domingo to Cuba to Miami and then by train to Washington.

I reminded you of my testimony in 1949 before the House Subcommittee on Labor and Education at hearings in Ponce, where I stated that the economic problems they had observed "required an 'Equal Deal' for the American citizens of Puerto Rico which would give them the equality of opportunity to which every American citizen is entitled so as to be able to solve his own problem by his own efforts and through his own enterprise."

In 1966, the United States-Puerto Rico Status Commission was created, and I had the privilege of being appointed on behalf of the Statehood position. One of its recommendations read: "Economic studies indicate that sustained economic growth, under the present status and continuation of the social economic arrangements will make Statehood, with adequate but not extraordinary or unprecedented provisions for transition, fully possible without severe risks."

Well, another generation has gone by since the status Commission Report of 1966 and the time is ripe for the transition then posited as possible without severe risks. When I spoke to you last, I was 85 years old. Next month I will be 87. But no bill has been approved by the Senate in those two years. Mr. Romero Barcelo's statement has pointed out that studies have been submitted by the various government agencies that prove that statehood is economically viable; furthermore, these studies show that statehood will be a net contributor to the federal treasury. Commonwealth, on the other hand, will continue to be a growing drain on U.S. taxpayers.

I ask you once more, are we going to try the same measures that have failed and have Puerto Ricans dependent more and more on the largesse of Congress, to find ourselves a generation from now with a larger economic dependency; or, is it not time to try the well-tested method of equality of rights, obligations and opportunities that have been successful with the 50 states?

This paternalistic approach that characterizes present relationships between the United States and Puerto Rico is not the way of American democracy. It is not fair to the 3,500,000 Puerto Ricans who have patriotically contributed to the defense of our country during all the armed conflicts we have been involved in during this century. They have done so without the right to vote for the President, and without voting representation in the U.S. Congress. Today, more than 10,000 Puerto Ricans are participating in Operation Desert Storm. One of them is my grandson who is serving in the 1st Armored Division near the border of Kuwait. Again, Puerto Rican's are contributing to our democracy and to the principle that all people of the world have the right to live in peace.

What am I going to tell my grandson, and what will other Puerto Rican parents and brothers tell their relatives when they return from this great ordeal? How will we in all good conscience be able to tell them that they fought for the freedom and rights of others, but that they will continue to be American citizens who are disenfranchised from their own political rights under the territorial clause of our Constitution?

Members of the Committee, I have the greatest respect for the U.S. Congress and for high moral principles that have, through history, inspired its actions. Giving Puerto Rico the right to assume the rights and responsibilities of a state of the Union, after almost 100 years of apprenticeship, is an honest reaffirmation of these lofty principles. The United States contracted a moral obligation when it invaded Puerto Rico in 1898 and brought us peacefully into the bosom of the great American democracy. You gave us U.S. citizenship in 1917 and we have earned our position of equality since then amongst all other Americans.

We are confident in your sense of fair play and we look forward to your granting the people of Puerto Rico the full embrace of Statehood.

The CHAIRMAN. Thank you very much, Governor Ferre. Thank you very much, gentlemen.

Next we are happy to welcome the Honorable Ruben Berrios-Martinez, who is President of the Puerto Rican Independence Party. He will be accompanied by Senator Fernando Martin, by Representative David Noriega, by Representative Hiram Melendez, by Commissioner Manuel Rodriguez-Orellana, and that is all. Ruben, we are pleased to have you back.

STATEMENT OF HON. RUBEN BERRIOS-MARTINEZ, PRESIDENT, PUERTO RICO INDEPENDENCE PARTY, ACCOMPANIED BY FERNANDO MARTIN, SENATOR; DAVID NORIEGA, REPRESENTATIVE; HIRAM MELENDEZ, REPRESENTATIVE; AND MANUEL RODRIGUEZ-ORELLANA, COMMISSIONER

Mr. BERRIOS-MARTINEZ. Thank you. Mr. Chairman, honorable members of the Committee, S. 244, now under consideration by your Committee, presents the Senate of the United States with the crucial subjects of ethnicity and nationality which the Puerto Rican case poses. Vital issues are involved for both the United States and Puerto Rico.

The real issue for the United States is what type of juridical and political relationship is it willing to venture with the people who constitute a historically distinct nationality inhabiting a separate and distinct territory who speak a different language, who aspire to maintain a separate identity, and who happen, through no choice of their own, to be citizens of the United States. The real issue facing the people of Puerto Rico is whether they have a future as a distinct nationality or whether, in the long run, they will be integrated or assimilated as a State of the American union. For Puerto Rico, our very existence as a distinct people is at stake.

I fear my statehood friends do not fully grasp the full implications of this issue, as has become evident by their testimony before you. This is not to say that other aspects of this bill are unimportant, but since our views on such aspects are a matter of record before this and other committees, I shall focus today on the transcendental issues which I have referred to.

I will, however, comment for the record on two aspects of this bill concerning which silence might be misinterpreted. First of all, concerning the concept of strategic denial contained in section 312, title III, let me state that it will be an unconscionable act on the part of the United States Senate to attempt to extract as a condition for independence the prior renunciation by the people of Puerto Rico of a future exercise of sovereignty.

Puerto Rico is not a strategic trust territory of the United States, and thus, concepts that might be applicable in other jurisdictions are totally unwarranted in Puerto Rico. All matters concerning the future Republic of Puerto Rico's relations with third parties must be of its exclusive jurisdiction. Although one cannot doubt that relations between Puerto Rico and the United States will be both close and friendly, it is not the time to bring back any version of a discredited Platt Amendment.

Secondly, I refer to the lack of a fixed calendar for the consideration by Congress of the result of the referendum. This constitutes a weakness in the bill. If the process poses a formula with the required majority, it is imperative that the people of Puerto Rico know by a date certain what action Congress has taken as a response to that petition. If by some specific future date Congress has not acted, the legislation should contain a mechanism for the resolution of established question which would come then into play.

By the same token, if the process does not produce, even after a run-off, an absolute majority, an alternative mechanism must be legislated now to ensure that the process leading to the final resolution of established question does not stagnate.

The members of the Senate should be aware of the grave implications of the Puerto Rican case which I referred to at the beginning. The existence of a distinct nationality, as opposed to an ethnic minority within the U.S. body politic, poses a potentially explosive situation which constitutes a new type of problem for the United States.

One of your own, Senator Daniel Patrick Moynihan, has fully recognized the profound implications of this issue when he stated before the Senate on May 24th, 1990, and I quote, "In the end the great issue involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans, for that is what statehood ineluctably implies. That is what statehood brings or do they wish to retain a separate identity?" End of quote from Senator Moynihan.

It is thus imperative to become fully aware of the nature of the nationality question before you deal with the Puerto Rican case. At the outset, we should note the fundamental distinction which our statehood friends do not grasp between the original concepts of Nation and nationality, which refer basically to a social and cultural entity, and the concept of nation-state, which refers basically to a territorial political organization that may be composed of one or various nationalities.

The classical definition of Nation is that included in the dictionary of the Spanish Academy since 1925 and I quote, "A collectivity of persons who have the same ethnic origin and in general speak a common language and possess a common tradition." End of quote. All the characteristics commonly associated with a Nation or with nationality are common territory, history, symbols, rituals, and fidelitas or primary loyalty to one's own nationality.

In contrast to the concept of a nationality or of a people, the modern Nation state concept is a product of post-17th century Europe. As a consequence of the French and American Revolutions, the term "nationality" became confused with the term "citizenship," as our statehood brothers do. And the term "nation" became confused with the term "nation-state," as our brothers from the statehood side do. When the French and the Americans spoke of "we, the people," they were referring to the citizens of France or to the citizens of the United States and not necessarily to the classical concept of a people in an ethnic and linguistic sense.

Language, for example, did not differentiate the 13 colonies from England. And in France, many French citizens, like the Bretons or the Corsicans, neither spoke French nor belonged to the same ethnic stock as other French citizens. Moreover, the old nation-states of Europe like Britain, Spain or France were multi-ethnic or multinational states composed of different nationalities, one of which has brought the others under its control.

It should also be remember that most 19th century theoreticians and ideologists, both Marxists and liberals, considered the cultural and linguistic characteristics of small nationalities disparagingly as an old piece of inherited family furniture, in the words of one of them.

They went so far as to argue that only large or viable nationalities had a right to establish a nation-state. It may become as a surprise to some of you that Mazzini, the father of Italian nationalism, did not favor independence for Ireland because of the small size of Ireland. But we should not be unfair to Mazzini. A large national economy and a widely spoken language were then considered indispensable elements of progress which could be achieved by a small nationality only through its absorption or assimilation into the economy, the language, and the culture over a larger nationality.

In any case, anyone who opposes such conventional wisdom could always be subdued by the use of force by the more powerful nationality, as in the case of Ireland, for example. It has only been in the latter part of this century as a consequence of the colonalization struggle all over the world and the resistance of small oppressed nationalities in Europe and other continents that the right of self-determination and indeed the right of all nationalities, large and small, to exist has finally come to be recognized as a fundamental human right.

Today, in 1991, nationalities have become one of the most powerful forces in world politics. And the old arguments regarding the size and the language of small nationalities as limits for them have become increasingly irrelevant.

The internationalization of world trade, the development of special trade arrangements, as well as the proliferation of transnational corporations, the revolution in communication and transportation technologies, and the extension of linguas francas, like English, Spanish, and French, make the old arguments about size and language meaningless and outdated.

It is within this context, in this background, that the United States must now decide on a course of action regarding Puerto Rico. And Puerto Rico constitutes a distinct nationality by any definition of the term. For Puerto Ricans of all political persuasions, the constituent elements of our national identity are not to be considered in the same category as old family furniture or as mere folklore, a term invented in the past century to calm sentiments of nostalgia and which refers to mere remnants of the past, not to the living present.

I need only remind the Senate that, at least conservatively speaking, 60 percent of the population of Puerto Rico does not speak English after almost a century of American control, and that all the political parties of Puerto Rico, all, including the pro-statehood party, officially proclaim that the Spanish language and Puerto Rico's culture and way of being are nonnegotiable under any status option.

No party would stand a chance in Puerto Rican elections if they did not so proclaim. The primary loyalty of Puerto Ricans is to Puerto Rico, not to the United States. I venture to say that, particularly because of its geographic distinctiveness as an island, because of its population density, Puerto Rico is almost a prototype of a nationality, and undoubtedly one of the most homogeneous nationalities in the New World.

The undeniable fact of the Puerto Rican nationality that we emphasize poses a complicated and potentially dangerous issue for the United States, an issue, as I have noticed already, totally different from that faced by you when dealing with the problem of national minorities within a pluralistic society.

In the United States, for example, ethnic minorities may retain folkloric or idiosyncratic traits, but they coalesce around the American way of life. That is what makes America great. There can be no doubt that after 200 years here in the United States, there exists a well-defined American nationality. In the cultural and social sense of the term, the U.S. is a unitary, not a multinational country. It is a country where the nation-state has created the nationality instead of the nationality creating the nation-state.

In light of this, unless Puerto Rico moves towards independence, sooner or later, the United States will have to face the following fundamental question. Is the United States willing to accept as a member of the Union a State which constitutes a distinct nationality whose members, moreover, are not willing to give up their own separate identity? I pose this question now because, regardless of the results of the proposed referendum, present-day dependence and subordination to the United States embodied in the commonwealth concept will inevitably breed a statehood majority in Puerto Rico unless new policies are developed to alter the prevailing trend. This is an inevitable development, although on a cultural and not a political level, Puerto Rico vocation for separateness has continued to strengthen.

I need only remind this Congress that the pro-statehood vote in 1950 was approximately 15 percent, while according to recent polls it is now approaching the 50 percent level. What is now happening in the Baltic states, in Yugoslavia, in Ireland, in the Basque Country, in Quebec, in Eritrea, or in Kashmir should provide sufficient warning of what could happen if Puerto Rico ever became a State.

Moreover, I advise you some of these problems might in fact be mild compared to the potential problem which Puerto Rico would create. Puerto Rico is not an isolated nationality like Lithuania or Croatia. Puerto Rico is part of a very large and important Latin American community of nations. Latin America will be permanently resentful of a big, powerful Nation which has swallowed one of their own. Evidence of this is already before the White House through communications which several Latin American presidents have made already to President Bush.

Moreover, U.S. citizens of Hispanic or Latin American extraction, a significant portion of which will be Puerto Rican, are expected to constitute a very large percentage of the U.S. population by the second decade of the next century.

Under such circumstances, a Latin American state like Puerto Rico could become a disruptive and divisive factor threatening the very fabric of American federalism.

I must also remind this Senate that the right of self-determination is, according to international law, an inalienable right which can never be taken away from a people. Neither from your people, nor from my people. It cannot be extinguished by its exercise in violation of the right of future generations.

Majorities and minorities come and go, but nationalities remain. And Puerto Rican independentistas will never give up the inalienable right to struggle for independence. And even if we did, who can speak for future generations? The word of Francis II, Emperor of Germany, referring to the loyal Tyroleans, comes to mind. "Today," I quote, "they are patriots for me. Tomorrow they may be patriots against me."

And George Washington in his farewell address of 1796 warned this American Nation of the problems posed by factional interests. I quote, "A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame lest, instead of warming, it should consume."

Two hundred years later, a peril such as this may be facing this nation-state of the United States. The fundamental question before you, thus, should be what should be done to avert such dangers? To start with, the United States should face the issue of Puerto Rico immediately. And I refer here particularly to Senator Nickles' and Wallop's words. They should face the issue of Puerto Rican statehood immediately.

To kill the referendum legislation would be short-sighted tactics based on the false premise that the possibility of the statehood petition can be wished away. The tough decisions concerning statehood cannot be avoided. The moment calls for great clarity and directness.

Since Puerto Ricans of all political persuasions postulate that they want to maintain their separate identity, nobody could claim offense if the U.S. Congress and this Senate decided that it did not want to incorporate a separate distinct nationality as a State of the Union. After all, the United States also has a perfect right to be separate and distinct from Puerto Rico or any other nationality.

Therefore, I propose, first, that Congress clearly state, through whatever means it deems appropriate, that a petition for statehood will not be considered until an overwhelming majority of the Puerto Rican people speak English.

Second, Congress should also make explicitly clear that a petition for Puerto Rican statehood will not be considered until Puerto Ricans have clearly, overwhelmingly, and repeatedly demonstrated their willingness to give up their separate identity and to become part of the American nationality. Puerto Ricans should know that in order for Puerto Rico to be come a State, they will have to, in Senator Moynihan's words, "become Americans."

This could only be objectively asserted, if at all, through overwhelming statehood majorities in repeated plebiscites over a considerable period of time. I repeat, through overwhelming statehood majorities in repeated plebiscites over a considerable period of time. Maybe then, maybe, a statehood petition could be understood in Senator Moynihan's words, "as a call to duty," rather than as a remedy for grievances. Or as I would phrase it, a guarantee for an unending food stamp line. After all, the battle cry for many Puerto Rican statehooders is, "Statehood is for the poor," a far, far cry from, "Give me liberty or give me death."

[Laughter.]

Mr. Berrios-Martinez. We have come a long way since the 19th century. Puerto Ricans, like Lithuanians or Croatians, fully understand the symbolism and full implication for all nationalities, large and small, of Genesis 25:29-34. Once when Jacob was boiling pottage, Esau came in from the field, and he was famished. And Esau said to Jacob, let me eat of that red pottage, for I am famished. Jacob said, first sell me your birthright. Esau said, I am about to die, of what use is a birthright to me? And Jacob said, swear to me first. So he swore to him and sold his birthright to Jacob. Thus Esau despised his birthright.

In the world of today and of tomorrow, no nationality should be willing to sell its birthright at any price, because birthright has no price. And besides, because nothing better can be accomplished by renouncing one's own nationality than by preserving it. Yet, if Congress were not to make clear to Puerto Rico their requirements of overwhelming political consensus and of cultural assimilation that statehood demands, it would run the risk of making to the present generation of dependent Puerto Ricans an offer that they, like Esau in Genesis, could not refuse.

Up to this point, I have analyzed the reasons why the United States should refuse even to consider statehood of Puerto Rico unless Puerto Ricans are willing to give up their separate identity.

It is now, before I end, appropriate to summarize the reasons why I struggle for independence, even though some them may by now be self-evident. The same ones you had to struggle for American independence, I have to struggle for Puerto Rican independence. All members of a nationality have a patriotic and moral obligation to help perpetuate that nationality. It is a gift from past generations which should be transmitted to future generations.

In this context, I cannot but recall Edmund Burke's powerful reminder to the British Parliament, "A Nation is not an idea only of individual, temporary aggregation. It is an idea of continuity. It is a deliberate election of the ages and of the generations. It is not a partnership in things subservient only to gross animal existence of a temporary and perishable nature. It is a partnership not only between those who are living but those who are dead and those who are yet to be born."

The establishment of a Puerto Rican nation-state will provide the juridical and political structure in which our nationality can naturally flourish and develop. But our other equally powerful reasons which make for independence of Puerto Rico indispensable. Puerto Rico, if it continues its present course of dependence and subordination to the U.S. brought about commonwealth since 1952, is doomed to become a ghetto state, or at best a chronically underdeveloped region of the United States.

In the last 40 years under Commonwealth, more than one-third of the Puerto Rican population has migrated to the United States. Puerto Rico's economy has become an appendage of that of the U.S. Federal transfers have increased from negligible amounts to around $6 billion yearly, and more than 40 percent of the families receive Federal nutritional assistance. Our labor participation rate is now one of the lowest in the whole world. No wonder then that the island is experiencing some of the highest drug addition, child abuse, and crime rates in the world. Treat a Nation like a ghetto, and it will behave as one.

The way out for Puerto Rico is to start moving away from dependence and statehood towards independence, which will provide us with the necessary tools and the inspiration to stand on our own two feet. We have to assume our full responsibility as a mature nationality. Only then can we break the vicious circle of dependence and helplessness that undermines any possibility of self-sustained growth and drains our dignity, our initiative, and our pride as a people.

Only then can we fully respect ourselves and can we aspire to fully receive the respect of others. We have a right to be an independent Nation aspiring to excellence. We have a right to transcend in history as a distinct people.

Thank you, very much.

[The prepared statement of Mr. Berrios-Martinez follows:]

PREPARED STATEMENT OF RUBEN BERRIOS-MARTINEZ, PRESIDENT, PUERTO RICAN INDEPENDENCE PARTY

S. 244 now under consideration by your Committee presents the Senate of the United States with the crucial subjects of ethnicity and nationality which the Puerto Rican case poses.

Vital issues are involved for both the U.S. and Puerto Rico. The real issue for the U.S. is what type of juridical and political relationship is it willing to venture with a people, who constitute a historically distinct nationality, inhabiting a separate and distinct territory, who speak a different language, who aspire to maintain a separate identity and who happen, through no choice of their own, to be citizens of the U.S.

The manner in which you deal with this problem will have profound and lasting effects for the U.S. both domestically and internationally.

The real issue facing the people of Puerto Rico is whether they have a future as a distinct nationalitu or whether, in the long run, they will be integrated or assimilated as a state of the American union.

For Puerto Rico, our very existence as a distinct people is at stake.

This is not to say that other aspects of this bill are unimportant. But since our views on such aspects are a matter of record before this and other Committees I shall focus today on the trascendental issues which I have referred to. Nevertheless I state my willingness to address any other aspect of the bill during the question and answer period.

I will however, at the risk of repetition, comment for the record on two aspects of this bill concerning which silence might be misinterpreted.

First of all, concerning the concept "strategic denial" contained in Sec. 312 of Title III, let me state that it would be an unconscioundable act on the part of the United States Senate to attempt to extract as a condition for independence the prior renunciation by the people of Puerto Rico of future exercise of sovereignty. Puerto Rico is not a strategic trust territory of the United States and thus concepts that might be applicable in other juridictions are totally unwarranted in Puerto Rico.

All matters concerning the future Republic of Puerto Rico's relations with third parties must be of its exclusive juridiction.

Although one cannot doubt that relations between Puerto Rico and the U.S. will be both close and friendly, it is not the time to bring back any version of the discredited Platt Amendment.

Secondly, I refer to the lack of a fixed calendar for the consideration by the Congress of the results of the referendum. This constitutes a glaring weakness in this bill. If the process produces a formula with the required majority it is imperative that the people of Puerto Rico know by a date certain, what action Congress has taken as a response to that petition. If by some specific future date Congress has not acted, the legislation should contain a mechanism for the resolution of the status question which would then come into play.

By the same token, if the process does not produce, even after the runoff, an absolute majority, an alternate mechanism must be legislated now to ensure, that the process leading to the final resolution of the status question does not stagnate.

I.

The members of this Senate should be aware of the grave implications of the Puerto Rican case. The existence of a distinct nationality, as opposed to an ethnic minority within the U.S. body politic, poses a potentially explosive situation which constitutes a new type of problem for the U.S., even though elsewhere it is an old problem which has anguished nation states for centuries.

One of your own, Senator Daniel Patrick Moynihan, has fully recognized the profound implications of this issue when he stated before the Senate on May 24, 1998:

> In the end, the great issues involved here are civic, not economic. Do the people of Puerto Rico wish to become Americans? For that is what statehood ineluctably implies. That is what statehood brings. Or do they wish to retain a separate identity?

The fact, if not the concept of nationality, is as old as history, and today, it constitutes one of the most powerful forces of humanity. It is thus imperative to become fully aware of the nature of the nationality question before you deal with the Puerto Rican case.

At the outset we should note the fundamental distinction between the original concepts of nation and nationality which refer basically to a social and cultural entity and the concept of nation state which refers basically to a territorial political organization that may be composed of one or various nationalities.

The classical definition of a nation is that included in the dictionary of the Spanish Academy since 1925 and I quote:

> A collectivity of persons who have the same ethnic origin and in general, speak a common language and possess a common tradition.

Other characteristics commonly associated with the nation or with nationality are common territory, history, symbols, rituals and fidelitas or primary loyalty to ones own nationality. That is why in the Romance languages, to which the words "nation" and "nationality" are indigenous, the root of the words refers to "origin" or "descent"; "natio" in latin.

Herodotus, for example considered the Greeks as one "people" because even though they lacked political unity, they had a common origin and descent, common language, common customs and way of life, and common gods.

In contrast to the concept of a "nationality" or of "a people" the modern nation state is a product of post-17th century Europe.

By the end of the 18th and begining of the 19th century, mainly as a consequence of the French and American revolutions, the term "nationality" became confused with the term citizenship; and the nation state became confused with the term "nation," which also came to be understood as a body of citizens whose political will or sovereignty found expression in a political state.

When the French and Americans spoke of "we the people" they were referring to the citizens of France or of the U.S. and not necessarily to the classical concept of a people in an ethnic or linguistic sense. Language for example, did not differenciate the thirteen colonies from England; and in France many French citizens, like the Bretons or the Corscians, neither spoke French nor belonged to the same ethnic stock as other French citizens.

Moreover, the old nation states of Europe like Britain, Spain or France were multiethnic or multinational states composed of different nationalitites, one of which had brought the others under its control.

It should also be remembered that most 19th century ideologists, both Liberals and Marxists, considered the cultural and linguistic characteristics of small nationalities disparangingly—as "an old piece of inherited family furniture," in the words of the Marxist theoretician Karl Kaustky.

They went so far as to argue that only large or viable nationalities had a right to establish a nation state. It may come as a surprise that Mazzini, the father of Italian nationalism, did not favor independence for Ireland because of the small size of that nation.

But we should not be unfair to Kautsky or Mazzini. A large national economy and a widely spoken language were then considered necessary to promote economic efficiency and to sustain a high level of linguistic culture. Both were seen as indispensable elements of progress which could be achieved by a small nationality only through its absorption or assimilation into the economy, the language, and the culture of a larger nationality.

Nobody said it with more scorn and contempt than John Stuart Mill;

> Nobody can suppose that it is not more beneficial for a Breton or a Basque of French Navarre to be . . . a member of the French nationality, admitted on equal terms to all the privileges of French citizenship . . . than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman or the Scottish highlander as members of the British nation.

In any case those who opposed such conventional wisdom could always be subdued through the use of force by the more powerful nationality, as in the case of Ireland.

Thus large, powerful nationalities not only assimilated and oppressed small nationalities, but even pretended to appropiate the term "nation" for their exclusive use.

It was only after continuous struggles and through the efforts of, among others, President Woodrow Wilson, that small nationalities (or at least small European nationalities) began, after World War I, to rescue their birthright and to successfully claim the right to establish their own nation states.

Only in the latter part of the present century, as a consequence of the decolonization struggles and the resistance of small, oppressed nationalities in Europe and other continents, the right of self-determination—and, indeed, the right of all nationalities, large and small, to exist—has been finally recognized as a fundamental human right.

Moreover a clear distinction has been established between the concept of nationalism for ofensive and expansionist purposes and nationalism as a defensive and liberating instrument.

Today nationalities have become one of the most powerful forces in world politics, and the old arguments regarding the size and language of small nationalities as limits to the establishment of nation states have become increasingly irrelevant. The internationalization of world trade, the development of common markets, free trade areas, and other special trade arrangements, as well as the proliferation of transnational corporations and banks, the revolution in communication and transportation technologies and the extension of "linguas francas"—like English, Spanish and French—make the old arguments about size and language meaningless and outdated. Needless to say, these same historical forces also stimulate better coordination and cooperation between nations.

It is within the context of this background that the U.S. must now decide on a course of action regarding Puerto Rico.

II.

Puerto Rico constitutes a distinct nationality by any definition of the term.

For Puerto Ricans of all political persuasions the constituent elements of our national identity are not to be considered in the same category as "old family furniture" or as mere folklore, a term invented in the past century to calm sentiments of nostalgia and which refers to mere remnants of the past, not to the living present.

I need only remind this Senate that 68% of the population of Puerto Rico does not speak English after almost a century of American control; and that all the political parties of Puerto Rico, including the pro-statehood party, officially proclaim that the Spanish language, and Puerto Rico's culture and way of being are non-negotiable under any status option. No party would stand a chance in Puerto Rican elections if they did not so proclaim. The primary loyalty of Puerto Ricans is to Puerto Rico.

I venture to say that particularly because of its geographic distinctness as an island, because of its population density, Puerto Rico is almost the prototype of a nationality, and undoubtedly one of the most homogeneous nationalities in the new world.

The undeniable fact of the Puerto Rican nationality—let me emphasize, poses a complicated and potentially dangerous issue to the U.S.; an issue—as I have already noticed—totally different from that faced by the U.S. when dealing with the problem of national minorities within a pluralistic society.

National minorities—because of their relative dispersion or lack of natural boundaries—do not typically have the alternative to form a territorial nation state. The alternatives of national minorities in pluralistic societies are largely limited to either assimilation, or the acceptance of minority status with recognition of some particular characteristics while struggling for equal treatment with the mainstream, dominant sectors of society.

In the U.S., for example ethnic minorities may retain folkloric and idiosyncratic traits, but they coalesce around the American way of life. There can be no doubt that after 288 years there exists a well defined American nationality in the cultural and social sense of that term. The U.S. is a unitary, not a multinational country. It is a country where the nation state has created the nationality, instead of the nationality creating the nation state.

In light of the above, unless Puerto Rico moves towards independence, sooner or later the U.S. will have to face the following question: is the U.S. willing to accent as a member of the union, a state which constitutes a distinct nationality whose members, moreover, are not willing to give up their own separate identity? If not, what are your going to do with the territory?

I pose these questions now because regardless of the results of the proposed referendum, present day dependence on and subordination to the U.S.—embodied in the Commonwealth relationship—will inevitably breed a statehood majority in Puerto Rico unless new policies are developed to alter the prevailing trend. This is an inevitable development although at a cultural—not political—level Puerto Rico's vocation for separateness has continued to strengthen.

I need only remind this Congress that the pro statehood vote in 1958 was approximately 15%, while according to recent polls it is now approaching the 58% level.

What is now happening in the Baltic states. in Yugoslavia, in Ireland, in the Basque country, in Quebec, in Eritrea or in Kashmir should provide sufficient warning of what could happen if Puerto Rico ever became a state. Moreover, some of these problems might in fact be mild in comparison to the potential problem which Puerto Rico could create.

Puerto Rico is not an isolated nationality, like Lithuania or Croatia. Puerto Rico is part of the very large and important Latin American community of nations. Latin America will be permanently resentful of a big, powerful nation which has swallowed one of their own. Evidence of this is already before the White House through communications which several Latin American presidents have made to President Bush.

Moreover U.S. citizens of Hispanic or Latin American extraction—a significant portion of them Puerto Ricans—are expected to approximate almost half of the U.S. population by the third decade of the next century. Under such circumstances a Latin American state like Puerto Rico could become a disrupting and divisive factor threatening the fabric of American federalism. I must also remind this Senate that the right of self-determination is, according to international law, an inalienable right which can never be taken away from a people. It cannot be extinguished by its excercise in violation of the rights of future generations.

Majorities and minorities come and go, but nationalities remain and Puerto Rican independentistas will never give up our inalienable right to struggle for independence. And even if we did, who can speak for future generations?

The words of emperor Francis II referring to the loyal Tyroleans come to mind: "Today they are patriots for me. Tomorrow, they may be patriots against me."

A prominent leader of the Independence Party counterpart during the American Revolution, George Washington, in his Farewell Address of 1796 warned the nation of the problems posed by factional interests:

> A fire not to be quenched, it demands a uniform vigilance to prevent its bursting into a flame, lest, instead of warming it should consume . . .

Two hundred years later such a peril may be facing your nation state.

The fundamental question, before this Senate should therefore be: what should be done to avert such dangers?

To start with, the U.S. should face the issue of Puerto Rican statehood immediately. To kill the referendum legislation would be a shortsighted tactic based on the false premise that the possibility of a statehood petition can be wished away. The tough decisions concerning statehood cannot be avoided.

I refer you to Anthony Lake's perceptive reflection when the former State Department Director of Policy Planning reminisced on a foreign policy failure in Latin America:

> When fordng a river, it's best to look upstream, to where the force of the water is probably less troublesome, the turbulance of the rapids less dangerous. Indeed, the source of the river may be a spring or small stream whose direction can easily be altered. A stream of events is similar, and in every crisis the foreign policy maker is tempted to, look back and say, If only . . . If only we had know a crisis was on the way and acted sooner, when our choices were easier, our influence greater . . .

The bill presently under consideration, as well as the bill unanimously approved by the House last year, have wisely rejected the notion of self-execution. It is evident that this refusal has everything to do with a hesitancy to commit the Congress past a point of no return should statehood achieve a majority in the referendum. As should be clear from my testimony, such hesitancy, and more, is plainly justified. Yet the moment calls for greater clarity and directness.

Since Puerto Ricans of all political persuasions postulate that they want to maintain their separate identity, nobody could claim offense if the U.S. Congress decided that it did not want to incorporate a separate and distinct nationality as a state of the union. After all, the United States also has a perfect right to be separate and distinct from Puerto Rico or any other nationality.

This Senate should be frank and candid with Puerto Rico. We therefore proposes:

First—That Congress clearly state, through whatever means it deems appropiate, that a petition for statehood will not be considered until an overwhelming maiority of the Puerto Rican people speak English.

Second—Congress should also make it explicitly clear that a petition for Puerto Rican statehood will not be considered until Puerto Ricans have clearly, overwhelming and repeteadly demonstrated their willingness to give up their separate identity and to become part of the American nationality. Puerto Ricans should know that in order for Puerto Rico to become a state they will have, in Senator Moynihan words, "to become Americans." This could only be objectively ascertained—if at all—through overwhelming statehood majorities in repeated plebiscites over a considerably period of time.

Maybe then, a statehood petition could be understood, in Senator Moynihan's words, as "a call to duty," rather than as a "remedy for grievances." Or as I would phrase it, a guarantee for an unending food stamp line. After all the battle cry of many Puerto Rican statehooders' is "Statehood is for the poor"—a far cry from "Give me liberty or give me death!".

We have come a long way since the days, of John Stuart Mill and Kautsky. Puerto Ricans, like Lithuanians or Croatians, fully understand the symbolism and full implication for all nationalities of Genesis 25:29-34:

> Once when Jacob was boiling pottage, Esau came in from the field, and he was famished. And Esau said to Jacob, 'Let me eat some of that red pottage, for I am famished!' . . . Jacob said, 'First sell me your birthright.' Esau said, 'I am about to die; of what use is a birthright to me?' Jacob said,

> 'Swear to me first.' So he swore to him, and sold his birthright to Jacob . . . Thus Esau despised his birthright.

In the world of today and of tomorrow, no nationality should be willing to sell its birthright at any price, because a birthright has no price. And because nothing better can be accomplished by renouncing ones own nationality than by preserving it.

Yet if Congress were not to make clear to Puerto Rico the requirements of overwhelming political consensus and of cultural assimilation that statehood demands, it would run the risk of making to the present generation of dependant Puerto Ricans an "offer" that they, like Esau in Genesis, could not refuse.

Who of you today does not feel some historical uneasiness—if not shame—at the imperialistic policies which turned the U.S. into a colonial power in Puerto Rico in the early 20th century?

It is not often that in such matters a Congress has the opportunity to right a wrong made by another Congress almost a century ago. This Senate can help that happen by speaking its mind—clearly and plainly—as to the prospects for statehood for Puerto Rico. It would be tragic if by not doing so it would contribute to compounding the mistake of the expansionist attempt in the Caribbean.

Moreover, the U.S., which has served as an example in so many areas, has a unique opportunity in the Puerto Rican case to contribute to the creation of a new world order in the present and future age of nationalities, by helping a small nationality flourish instead of by trying to assimilate it. Both, the U.S. and the world, will be the better for it.

III.

Up to this point I have analyzed the reasons why the U.S. should refuse even to consider statehood for Puerto Rico unless Puerto Ricans are willing to give up their separate identity.

It is now appropiate, before I conclude, to summarize the reasons why I struggle for independence even though some of them may, by now, be self-evident.

All members of a nationality have a patriotic and moral obligation to help perpetuate their nationality. It is a gift from past generations which should be transmitted to future generations.

In this context I cannot but recall Edmund Burke's powerful reminder:

> A nation is not an idea only of individual momentary aggregation; . . . it is an idea of continuity. It is a deliberate election of the ages and generations. It is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature . . . It is . . . a partnerhip not only between those who are living, but between those who are dead, and those who are to be born.

The establishment of a Puerto Rican nation state will provide the juridical and political structure in which our nationality can naturally flourish and develop.

But there are other equally powerful reasons which make independence for Puerto Rico indispensable.

Puerto Rico, if it continues its present course of dependence and subordination to the U.S., is doomed to become a ghetto state, or at best a chronically underdeveloped region of the U.S.

In the last 40 years, under Commonwealth, more than 1/3 of the Puerto Rican population has migrated to the U.S. Puerto Rico's economy has become an appendage of the U.S., federal transfers have increased from negligible amounts to around 6 billion yearly and more than 40% of the families receive federal nutritional assistance. Our labor participation rate is now one of the lowest in the world.

No wonder then that the island is experiencing some of the highest drug addiction, child abuse and crime rates of the world. Treat a nation like a ghetto and it will behave as one.

Puerto Rico's basic problem is dependence—not only juridical and political but also economic, cultural, social and psychological. Although statehood might juridically appear as a solution to the colonial problem, in reality, for Puerto Rico it is just another form of subordination and dependence, colonialism in another guise. For statehood would only make dependence more acute, and its political power would serve primarily to press for ever increasing federal largesse.

The way out for Puerto Rico is to start moving away from dependence and statehood towards independence which will provide us with the necessary tools and inspiration to stand on our two feet.

We have to assume our full responsibility as a mature nationality.

Only then can we break the vicious circle of dependence and helplessness that undermines any possibility of self-sustained growth, and drains our dignity, our intiative, and our pride.

Only then can we fully respect ourselves and can we aspire to fully receive the respect of others.

We have a right to be an independent nation aspiring to excellence. We have a right to transcend in history as a distinct people.

The CHAIRMAN. Thank you very much, Senator Berrios.

Next we will hear from the Honorable Rafael Hernández Colón, who is president of the Popular Democratic Party. He is also the sitting Governor of Puerto Rico. He will be accompanied by Jaime Fuster, who is of course our colleague, the Resident Commissioner of Puerto Rico who serves in the House of Representatives, and Jose Berrocal, who is counselor to the Governor.

Governor Hernández, welcome back to the committee.

STATEMENT OF HON. RAFAEL HERNÁNDEZ COLÓN, GOVERNOR, COMMONWEALTH OF PUERTO RICO, ACCOMPANIED BY HON. JAIME B. FUSTER, RESIDENT COMMISSIONER FOR PUERTO RICO IN THE U.S. HOUSE OF REPRESENTATIVES; AND JOSE BERROCAL, COUNSELOR TO GOVERNOR HERNÁNDEZ COLÓN

Governor HERNÁNDEZ. Thank you, Mr. Chairman. Good morning Mr. Chairman and distinguished members of the Committee. I greatly appreciate the opportunity to testify today on S. 244.

Nearly 2 years ago, I initiated this process as Governor of the people of Puerto Rico, with an electoral mandate to obtain broader self-government and respect for the sovereignty and political dignity of the commonwealth relationship. We thus embarked on the quest for Federal legislation to define the political status options mutually acceptable to Puerto Rico and the United States and to commit the Congress to implement the status freely chosen by our people.

Profound differences between the Senate and the House regarding the process of self-determination delayed our efforts in the previous Congress. At the outset, I want you to know that we in Puerto Rico are very much concerned with this impasse and have strongly urged the leadership of both Houses promptly to reach a consensus so that the referendum can be held this year.

S. 244 affords the people of Puerto Rico an opportunity to place on a permanent, stable basis the commonwealth political model created 40 years ago. Throughout the first half of this century, Puerto Rico struggled to realize its ideals economic progress, self-government, and identity. Yet, while Puerto Rico's options were understood to be limited to statehood or independence, the simultaneous achievement of these ideas seemed inevitably beyond our reach.

Two mutually exclusive visions clashed head on, leaving the full range of Puerto Rican potential apparently trapped in an inexorable choice. The notion of statehood was economically and culturally unworkable. Independence was not only economically unthinkable, but inconsistent with the desire of the people to maintain their U.S. citizenship and to live in permanent union with the United States.

The creation of commonwealth afforded a new course away from these impossible choices and away from a long legacy of colonialism. Commonwealth was an extraordinary, innovative, and creative model of governance. It remains the common-sensical political expression of the two essential aspirations of the Puerto Rican people: their allegiance to their association with the United States and their U.S. citizenship, and their will to maintain their sense of identity as a people in their own right with a distinct, historical heritage and cultural identity.

The genius of commonwealth has proven to be enormously powerful in forging a new Puerto Rico. First, commonwealth provides a solid and dignified foundation of self-governance based on the principal of consent including physical autonomy and power over local affairs.

Second, Commonwealth assures the preservation of the rich cultural heritage of Puerto Rico. Commonwealth allows us to retain our unique identity and personality in the world in a way that is harmonious and mutually enriching for the United States and Puerto Rico.

Third, the flexibility and dynamism of commonwealth has given Puerto Rico unique policy tools to achieve dramatic economic and social progress. Our relationship with the U.S. has given us economic stability and access to the largest market in the world. Our fiscal autonomy, impossible under statehood, has enabled us to attract industry through low, effective tax rates. This autonomy is the irreplaceable pilar of our economic development and sustains our productive sector.

The results are truly inspiring. Puerto Rico has set an example of how a small, poor, agrarian, and densely populated island with limited exploitable natural or technological resources can emerge as vigorous and industrious society.

Once considered a stricken land, the poorest of the poor countries in the hemisphere, Puerto Rico today enjoys the highest standard of living in Latin America. Though our present income per capita of $6,060 is less than one-third of the U.S. average, and about one-half of Mississippi, the poorest State, it nonetheless is 16 times greater than it was in 1950 in Puerto Rico when it was only $342.

Our exports have boomed from $235 million in 1950, to $16.3 billion in 1989. In 1950, we had 35,000 telephones. Today we have over 1 million. Perhaps most significant, these changes occurred without social unrest and with a total commitment to democratic values and processes.

The path of success I have just outlined has contributed to the U.S. as it has benefited Puerto Rico. Our political stability and economic strength have served as a vigilant guardian of democracy and free enterprise in the Caribbean region. Economically, Puerto Rico is one of the U.S.' largest trading partners. Our $14 billion in imports, more than two-thirds comes from the U.S. At $9.4 billion, Puerto Rico's purchases exceed the combined purchases of Argentina, Brazil, and Colombia. It is estimated that our purchases generate 140,000 jobs in the United States.

Puerto Rico's progress under commonwealth has also fueled economic growth in the Caribbean. In an even more interdependent world economy, Puerto Rico cannot exist as an island by itself disconnected in geography and separate in its fate from its neighbors. Thus we are using the unique policy tools of commonwealth to turn Puerto Rico into the economic center of the Caribbean.

Puerto Rico has been instrumental in making the Caribbean Basin Initiative a working reality. Through our Caribbean Development Program we have actively promoted the establishment of complementary or twin plant production and the investment of low-cost 936 funds. This has resulted in close to 100 new industrial projects in 12 Caribbean countries which will create approximately 16,000 jobs and over $546 million in investment. Moreover, we have played a critical role in fostering the requisite approval by six Caribbean countries of tax information exchange agreements with the United States.

But our contribution goes beyond economics. As a Latin American and Caribbean people and as U.S. citizens, Puerto Ricans are in a unique position to aid U.S. efforts at promoting democracy and progress in the hemisphere. To many of its neighbors, Puerto Rico stands as a living, credible example of what a people committed to improving their own lives through their own efforts can do.

The fundamentally democratic quality of Puerto Rico's institutions and our commitment to democracy in Latin America and the Caribbean have had a profound influence in the region. In 1980, Romulo Betancourt of Venezuela wrote, "During the decade of the 1950's, Latin America, engulfed by dictatorships, Puerto Rico became a haven for all free men of Latin America and Europe." Romulo was one of these exiles, political exiles to find refuge in Puerto Rico.

Commonwealth is no longer a unique arrangement. More and more nations are discovering the benefits of economic integration of politically autonomous nationalities. In the European Community, they use the concept of pooling of sovereignty to this effect. The Soviet Union will have to move in this direction if it is to peacefully accommodate its nationalities.

Contrary to the vision of commonwealth shared by statehooders and independentistas, the governing party of Puerto Rico visualizes the commonwealth relationship as permanent. For us, it is not a halfway house to either statehood or independence, but rather the optimal creative solution to the problems of a developing society in its aspirations for progress, and the proud preservation of its distinctive cultural identity.

But while permanent, commonwealth was never intended to be static. To the contrary, the framers of commonwealth envisioned that the relationship would be an evolving and dynamic one responding to changing conditions. The enhancements contemplated in the new commonwealth's formulation set forth in this legislation are intended to clarify, strengthen, and improve the fundamental elements of this relationship by providing for:

Greater prosperity and self-sufficiency by accelerating Puerto Rico's economic and social development.

Broader self-government within the framework of Puerto Rico's relationship with the United States, based on the permanence of a common citizenship defense, currency, and market, in those areas where a vital national interest of the United

States is not involved, and where Puerto Rico would be better served by local control.

Safeguarding the distinct identity of the people of Puerto Rico and its Spanish language, its culture, heritage, and Olympic representation within a dignified and harmonious relationship with the United States.

Affirming the bilateral, noncolonial nature of the relationship between Puerto Rico and the United States, which is based upon mutual consent under a compact.

Assuring the stability and permanence of the relationship and of the irrevocability of U.S. citizenship, which is protected by the U.S. Constitution.

Equitable participation in Federal entitlement programs for U.S. citizens residing in Puerto Rico, AFDC, SSI, Medicaid, and nutritional assistance, consistent with revenue neutrality. This has been achieved in the legislative amendment forwarded to this committee by the Finance and Agriculture Committees of the Senate. The residents of the new commonwealth would receive the same benefits as residents of the States in these programs, with an appropriate contribution by Puerto Rico which would be consistent the Island's economic development incentives and physical autonomy.

Establishing a Federal policy toward the commonwealth to harmonize Federal uniformity with the particularities of an insular developing society and with a different culture, language and heritage, such as Puerto Rico.

The new commonwealth presents a political model for the 1990's when new accommodations are being sought for nationalities all over the world. It goes beyond the traditional models of the past, the solutions of the 1950's, and charts a path of union with pride and respect towards the future.

Our commonwealth is based on the recognition of separate identities but shared goals. We aspire to enact this new commonwealth as soon as possible. For us, self-determination is not an end, but a means for the advancement of our people. We seek not a mere vote on status; we seek a solution to the status quandary. Wisely expressed, it is not the journey that we are after, it is the destination.

Throughout this process, we have ask that the referendum legislation meet certain basic criteria, which were affirmed last November in a resolution passed by the governing Popular Democratic Party. First, a commitment from Congress to respect the will of the Puerto Rican people and implement whatever option is chosen in the referendum.

Second, clear and complete definitions on each status formula so that the understanding of each option entailed is the same in Washington as it is in Puerto Rico. All three formulas must be of equal political dignity and not subject to the plenary powers of Congress under the territorial clause.

Third, a level playing field between these three noncolonial formulas so that the referendum process is fair and balanced and the choice truly rests with the people of Puerto Rico.

Fourth, due deference to Puerto Rico's election laws and procedures so that the self-governing nature of the commonwealth and spirit of self-determination are respected.

Fifth, a run-off referendum between the two options which receive the most votes in the first round, if there not a majority. This must not be an exercise in frustration, an invitation to an impasse.

I am pleased to say, Mr. Chairman, that S. 244, as introduced, contains most of these crucial elements. Therefore, it is a good working document and we support it as such. The successful development of this proposal is due to your consistent efforts and those of the distinguished ranking member of the committee, Senator Wallop.

It is also due to the conscientious and dedicated work of the committees on finance and agriculture, which after extensive and rigorous work, unanimously amended S. 712 structuring fair and balanced economic transitions in a revenue-neutral manner.

Yet, it still has to be developed further in several important areas. S. 244 is silent on several crucial issues that must be addressed before the referendum in order to ensure a true meeting of the minds between Washington and Puerto Rico, and a common understanding on the implications of each political formula. Any attempt to avoid these issues will create clashes of expectations and future political instability.

It must be understood in Washington that Puerto Ricans are not merely another minority group within a pluralistic society, as my colleague, Mr. Berrios, expressed so eloquently before my appearance.

Puerto Ricans form a distinct cultural nationality, a different people in an island, by right, our own. Thus, we must have a clear answer on the question of language under statehood. Puerto Rico is by all standards, a Spanish-speaking country. Sixty percent speak no English at all. Another 20 percent, very poorly. Language is the heart of culture and identity, yet S. 244 is silent on this matter.

A related matter, not properly addressed in the legislation, but of profound symbolic significance in Puerto Rico is international sports. In the Amateur Sports Act, the States and the District of Columbia have only one Olympic team. Puerto Rico, as a commonwealth, has its own. Statehooders insist that we will keep our own Olympic team by being a State of the Union. S. 244 is silent on this matter.

These are hard questions, but inescapable ones, because the statehood movement in Puerto Rico has been preaching a jibaro, or creole, State. According to their rhetoric, we would join the Union as a distinct people with a separate national identity and language, unlike Alaska, Hawaii, Texas, Oklahoma, New Mexico, or Mr. Chairman, your own great State of Louisiana.

The statehooders' false promise would defy the fundamental principle that has forged a common identity for the people of the United States. That principle is reflected in the words inscribed on the wall behind the rostrum in the chamber of this great body, the United States. These words are "E Pluribus Unum." Out of many, one. Many ethnic backgrounds, molded into one people with common symbols, a unified language, and no ambiguity as to their identities.

Mr. Chairman, statehood advocates have tried to hide the imperative of "E Pluribus Unum" from the Puerto Rican people. Instead they have cast statehood merely as an economic bonanza of Federal welfare spending. In the words of former Governor Romero, and I quote, "If it were a State, Puerto Rico would be assured of enormous amounts of Federal money." In his book, Statehood is for the Poor, he suggests, and I quote him again, "Puerto Rico's contribution to the Federal Treasury, were we a State, would come to less than that of any other State in the union. On top of this, the per capita benefits we would reap from Federal aid would be greater than those of any other State of the Union."

The Congress cannot responsibly ignore these expectations. If this is the understanding of statehood in the Congress, then so be it. But if Congress believes, as we do, that statehood should respond not to the illusory expectation of economic bonanzas, of welfare monies, but to an express fervent desire by Puerto Ricans to form not only a State of the Union, but also an integral part of the American Nation and the American soul.

If Congress believes that statehood presupposes a willingness to blend into the American melting pot, then this must be made clear to the people of Puerto Rico. Contrary to the wishes of many, after the transition, statehood would be increasingly and permanently costly in fiscal terms to the Federal Treasury and in human terms to the Puerto Rico people.

The CHAIRMAN. Governor, I do not want to interrupt you, but if you could sum up in about 5 minutes, that will give us an hour of questioning. Could you do that? Excuse the interruption, please.

Governor HERNÁNDEZ. Yes. I will go to the economic matter and then I will go to the people in the Persian Gulf.

Contrary to the wishes of many, after the transition, statehood would be increasingly and permanently costly. For solid constitutional and political reasons, Puerto Rico could not preserve a tax autonomy under statehood. The imposition of Federal income taxes, individual and corporate, would destroy Puerto Rico's continued economic prosperity and self-sufficiency. The export-oriented manufacturing sector which is the engine of our economy sustaining related services and generating close to 300,000 direct and indirect jobs, is critically contingent upon the fiscal autonomy that Puerto Rico would lose under statehood.

CBO concluded that, under statehood, Puerto Rico would suffer a permanent drop in real GNP of between 10 percent and 15 percent by the year 2000, accompanied by a loss of between 50,000 and 100,000 private-sector jobs. Salaries would decline by 25 percent. And transfer payments would constitute then 40 percent of the economy of the new State.

Now Mr. Chairman, for change is swirling around us. As I speak, brave young men and women from Puerto Rico are risking their lives in the Persian Gulf to uphold the possibility of a new international order. Puerto Ricans who treasure their U.S. citizenship and its inherent responsibilities have now fought in five wars in this century. With quiet valor and high courage, they have freely done their part as loyal Puerto Ricans and as loyal American citizens to safeguard the common defense and security upon which our commonwealth union rests.

Many have paid the ultimate sacrifice a free society asks of here children. It is for us to honor their memory and their devotion to duty. For their sacrifice is not for any personal preference or political status. The young Puerto Ricans risking their lives in the Gulf are not of one mind on the island's political destiny. But they are of one of their commitment honorably to this charge, the call of the President and the Congress, as are all other American citizens.

Mr. Chairman, these Puerto Ricans out in the Gulf write to me. And I have here a number of the letters that they have written to me, beginning back in the 9th of November. I would just like to end my words by reading one of these letters to you. This letter is representative of the feeling that runs throughout all of these letters that I have here and that I will place before you.

It says as follows, Mr. Chairman, and I think it gives you a very good description of how Puerto Ricans feel their citizenship, about their identity.

It says to me, "Honorable Governor, we hope that you and your distinguished family are in good health. We are sergeants in the United States Air Force. Presently we are serving in the Saudi Arabian desert. We wish to greet you and through you to let Puerto Rico know some of the anxieties that we as soldiers from Borinquen—that is the Indian name of our island—feel. The three of us were stationed in Panama throughout the Noriega crisis. We witnessed much suffering brought about by selfishness, corruption, and violence. We also witnessed how the people were able to laugh and there was no cause to laugh and dance when there was no cause to dance.

"The time we served there allowed us to think about our small island of Puerto Rico. We thought, gosh, how much we complain about petty things in Puerto Rico. It made us realize how fortunate we were. We did our bit for Panama. We lent our hand to that fraternal people. For our beautiful Puerto Rico, we do much more.

"Do not think that my comrades and I are in the desert just to defend the 50 stars in the stars and stripes. We are here also for the single, the most beautiful—the star of Borinquen—the Puerto Rican flag. Wherever we go, we strive to hold high the name of Puerto Rico.

"I see today how many of my fellow countrymen from Borinquen, like us, march towards a possible war in a foreign land as in times past. We march with tears in our eyes but with our heads held high. Our strength is in the thoughts of our families, our fatherland, our faith in God.

"In times of natural disasters or of crisis such as this one, Puerto Rico always becomes united. Today it sees its sons far away, and it suffers, but it is united. And I wish that it would always remain united, not just in time of suffering and pain. Maybe then we could do away with the ills that aggravate our people.

"My comrades and I ask of our country to wake up and realize the sacrifices that its sons make, that if my comrades and I were to die in the defense of our fatherland, our sons, who anxiously await our return would tomorrow be able to say, gosh, daddy died for our true island of enchantment.

"We are not preachers nor do we hold political ambitions. We are simply Puerto Rican soldiers that wish to know that their sacrifices will not be in vain. Let us struggle all united as brothers, without religious, partisan, or social differences to enhance our fatherland. We are ready to give our lives for Puerto Rico. How much are you willing to give? Pray for us. Ask God to protect us so that we may return to our families safe and sound, and on returning, be able to say it was worthwhile."

Thank you very much.

[The prepared statement of Governor Hernández follows:]

PREPARED STATEMENT OF HON. RAFAEL HERNANDEZ COLON, GOVERNOR, COMMONWEALTH OF PUERTO RICO

Mr. Chairman and distinguished Members of the Committee: I greatly appreciate the opportunity to testify today on S. 244. Nearly two years ago I initiated this process as Governor of the people of Puerto Rico, with an electoral mandate to attain broader self-government and respect for the sovereignty and political dignity of the Commonwealth relationship. We thus embarked on the quest for federal legislation to define the political status options mutually acceptable to Puerto Rico and the United States, and to commit the Congress to implement the status freely chosen by our people.

Profound differences between the Senate and the House regarding the process self-determination delayed our efforts in the previous Congress. At the outset, I want to note that we in Puerto Rico are very concerned with this impasse and have strongly urged the leadership of both houses promptly to reach a consensus so that the referendum can be held this year.

S. 244 affords the people of Puerto Rico an opportunity to place on a permanent, stable basis the Commonwealth political model created forty years ago. Throughout the first half of this century, Puerto Rico struggled to realize its ideals of economic progress, self-government, and identity. Yet, while Puerto Rico's options were understood to be limited to statehood or independence, the simultaneous achievement of these ideals seemed inevitably beyond reach. Two mutually exclusive visions clashed head on, leaving the full range of Puerto Rican potential apparently trapped in an inexorable choice.

The notion of statehood was economically and culturally unworkable. Independence was not only economically unthinkable but inconsistent with the desire of the people of Puerto Rico to maintain their U.S. citizenship and live in permanent union with the United States.

The creation of Commonwealth afforded a new course away from these impossible choices and away from a long legacy of colonialism. Commonwealth was an extraordinarily innovative and creative model of governance. It remains the commonsensical political expression of the two essential aspirations of the Puerto Rican people: their allegiance to their association with the United States, and their U.S. citizenship; and their will to maintain their sense of identity as a people in their own right, with a distinct historical heritage and cultural identity.

The genius of Commonwealth has proven to be enormously powerful in forging a New Puerto Rico.

First, Commonwealth provides a solid and dignified foundation of self-governance based on the principle of consent, including fiscal autonomy and power over local affairs.

Second, Commonwealth assures the preservation of the rich cultural heritage of Puerto Rico. Commonwealth allows us to retain our unique identity and personality in the world, in a way that is harmonious and mutually enriching for the United States and Puerto Rico.

Third, the flexibility and dynamism of Commonwealth status has given Puerto Rico unique policy tools to achieve dramatic economic and social progress. Our relationship with the U.S. has given us economic stability and access to the largest market in the world. Our fiscal autonomy, impossible under statehood, has enabled us to attract industry through low effective tax rates. This autonomy is the irreplaceable pillar of our economic development strategy and sustains our productive sector.

The results are truly inspiring. Puerto Rico has set an example of how a small, poor, agrarian, and densely populated island, with limited exploitable natural or technological resources can emerge as a vigorous and industrious society. Once considered a "stricken land," the poorest of the poor countries in the hemisphere, Puerto Rico today enjoys the highest standard of living in Latin America.

Though our present income per capita of $6,060 is less than one third of the U.S. average and about one half that of Mississippi, the poorest state, it nonetheless is sixteen times greater than in 1950, when it was only $342. Our exports have boomed from $235 million in 1950 to $16,355 million in 1989. In 1950 we had 35,000 telephones; today we have over one million. Perhaps most significant, these changes occurred without social unrest and with a total commitment to democratic values and processes.

The path of success I have just outlined has contributed to the U.S. as it has benefited Puerto Rico. Our political stability and economic strength have served as a vigilant guardian of democracy and free enterprise in the Caribbean region.

Economically, Puerto Rico is one of the U.S.'s largest trading partners. Of our $14 billion in total imports, more than two thirds comes from the U.S. At $9.4 billion, Puerto Rico's purchases of U.S. products exceed the combined purchased of Argentina, Brazil and Colombia, the leading U.S. customers in South America, with an aggregate population of 228 million. It is estimated that Puerto Rico's purchases generate 140,000 jobs in the United States.

Puerto Rico's progress under Commonwealth has also fueled economic growth in the Caribbean. In an ever more interdependent world economy, Puerto Rico cannot exist as an island by itself, disconnected in geography and separate in its fate from its neighbors. Thus we are using the unique policy tools of Commonwealth to turn Puerto Rico into the economic center of the Caribbean.

Puerto Rico has been instrumental in making the Caribbean Basin Initiative a working reality. Through our Caribbean Development Program we have actively promoted the establishment of complementary or twin plant production and the investment of low-cost 936 funds. This has resulted in close to 100 new industrial projects in 12 Caribbean countries which will create approximately 16,000 new jobs and over $546 million in investment. Moreover, we have played a critical role in fostering the requisite approval by 6 Caribbean countries of Tax Information Exchange Agreements with the United States.

Our contribution goes beyond economics. As a Latin American and Caribbean people and as U.S. citizens, Puerto Ricans are in a unique position to aid U.S. efforts at promoting democracy and progress in the hemisphere. To many of its neighbors, Puerto Rico stands as a living, credible example of what a people committed to improving their own lives through their own efforts can do.

The fundamentally democratic quality of Puerto Rico's institutions and our commitment to democracy in Latin America and the Caribbean have had a profound influence in the region. In 1980 Rómulo Betancourt of Venezuela wrote: "During the decade of the 1950's, Latin America engulfed by dictatorships, Puerto Rico became a haven for all free men of Latin America and Europe."

Commonwealth is no longer a unique arrangement. More and more nations are discovering the benefits of economic integration of politically autonomous nationalities. In the European Community they use the concept of pooling of sovereignty to this effect. The Soviet Union will have to move in this direction if it is to peacefully accommodate its nationalities.

Contrary to the vision of Commonwealth shared by the statehood and independence parties, the governing party of Puerto Rico visualizes the Commonwealth relationship as permanent. For us, it is not a half-way house to either statehood or independence, but rather the optimal creative solution to the problems of a developing society in its aspirations for progress, and the proud preservation of its distinctive cultural identity.

But while permanent, Commonwealth was never intended to be static. To the contrary, the framers of Commonwealth envisioned that the relationship would be an evolving and dynamic one, responsive to changing conditions.

The enhancements contemplated in the New Commonwealth formulation set forth in this legislation are intended to clarify, strengthen and improve the fundamental elements of this relationship, by providing for:

Greater prosperity and self-sufficiency by accelerating Puerto Rico's economic and social development.

Broader self-government, within the framework of Puerto Rico's relationship with the U.S., based on the permanence of a common citizenship, defense, currency and market, in those areas where a vital national (U.S.) interest is not involved, and where Puerto Rico would be better served by greater local control.

Safeguarding the distinct identity of the people of Puerto Rico, and its Spanish language, its culture, heritage, and Olympic representation, within a dignified and harmonious relationship with the United States.

Affirming the bilateral, non-colonial nature of the relationship between Puerto Rico and the United States, which is based upon mutual consent under a compact.

Assuring the stability and permanence of the relationship, and the irrevocability of U.S. citizenship, which is protected by the U.S. Constitution.

Equitable participation in federal entitlement programs for U.S. citizens residing in Puerto Rico (namely AFDC, SSI, Medicaid and Nutritional Assistance), consistent with federal revenue neutrality. This has been achieved in the legislative amendments forwarded to this Committee by the Finance and the Agriculture, Nutrition and Forestry Committees of the Senate. The residents of the New Commonwealth of Puerto Rico would receive the same benefits as residents of the states in these programs, with an appropriate contribution by Puerto Rico consistent with the Island's economic development incentives and fiscal autonomy to offset the added cost of the increases.

Establishing a federal policy toward the Commonwealth to harmonize federal uniformity with the peculiarities of an insular developing society with a different culture, language and heritage, such as Puerto Rico.

The New Commonwealth presents a political model for the 1990's when new accommodations are being sought for nationalities all over the world. It goes beyond the traditional models of the past, the solutions of the fifties, and charts a path of union with pride and respect towards the future. Our New Commonwealth is based on the recognition of separate identities but shared goals.

We aspire to enact this New Commonwealth as soon as possible. For us, self-determination is not an end in itself, but a means for the advancement of our People. We seek not a mere vote on status; we seek a solution to the status quandary. Wisely expressed, "it is not the journey that we are after, it is the destination."

Throughout this process, we have asked that the referendum legislation meet certain basic criteria, which were reaffirmed last November in a resolution passed by the governing Popular Democratic Party:

First, a commitment from Congress to respect the will of the Puerto Rican people, and to implement whatever option is chosen in the referendum. A popularity contest between the statuses would serve no purpose.

Second, clear and complete definitions of each status formula, so that the understanding of what each option entails is the same in Washington as in Puerto Rico. All three formulas must be of equal political dignity and not subject to the plenary powers of Congress under the territorial clause.

Third, a level playing-field between three non-colonial status formulas, so that the referendum process is fair and balanced, and the choice truly rest with the people of Puerto Rico.

Fourth, due deference to Puerto Rico's election laws and procedures, so that the self-governing nature of the Commonwealth and the spirit of self-determination are respected.

Fifth, a runoff referendum, between the two options which receive the most votes in the first round, if there is not a majority. This must not be an exercise in frustration, an invitation to an impasse.

I am pleased to say, Mr. Chairman, that S. 244 as introduced contains most of these crucial elements. Therefore it is a good working document, and we support it as such. The successful development of this proposal is due to your consistent efforts and those of the distinguished Ranking Member of the Committee, Senator Wallop. It is also due to the conscientious and dedicated work of the Committees on Finance and Agriculture, which after extensive and rigorous work unanimously amended S. 712, structuring fair and balanced economic transitions in a revenue neutral manner.

Yet, it has still to be developed further in several important areas. S. 244 is silent on several crucial issues that must be addressed before the referendum, in order to insure a true meeting of the minds between Washington and Puerto Rico, and a common understanding of the implications of each status formula. Any attempt to avoid these issues will generate clashes of expectations and future political instability.

It must be understood in Washington that Puerto Ricans are not merely another minority group within a pluralistic society. Puerto Ricans form a distinct cultural nationality, a different People in an island by right our own.

Thus, we must have a clear answer on the question of language under statehood. Puerto Rico is, by all standards, a Spanish speaking country: 60% speak no English at all, another 20% very poorly. Language is the heart of culture and identity. Yet S. 244 is silent on this.

A related matter, not properly addressed in the legislation but of profound symbolic significance, is international sports. Under the Amateur Sports Act the states and the District of Columbia have only one Olympic Team. Puerto Rico as a Commonwealth has its own. Statehooders insist we will keep our Olympic Team, but S. 244 is silent on this.

These are hard questions, but inescapable ones because the statehood movement in Puerto Rico has been preaching a Jibaro or "Creole" state. According to their rhetoric, we would join the Union as a distinct people with a separate national identity and language—unlike Alaska, Hawaii, Texas, or Oklahoma, New Mexico, or, Mr. Chairman, your own great state of Louisiana.

The statehooder's false promise would defy the fundamental principle that has forged a common identity for the people of the United States. That principle is reflected in the words inscribed on the wall behind the rostrum in the chamber of this great body, the United States Senate. Those words are "E Pluribus Unum"—Out of many, one. Many ethnic backgrounds moulded into one people, with common symbols, a unifying language and no ambiguity as to their identities.

Mr. Chairman, statehood advocates have tried to hide the imperative of "E Pluribus Unum" from the Puerto Rican people. Instead they have cast statehood merely as an "economic bonanza" of federal welfare spending. In the words of former Governor Romero "If it were a state, Puerto Rico would be assured of enormous amounts of federal money." In his book "Statehood is for the Poor" he suggests that, and I quote:

> Puerto Rico's contribution to the federal treasury, were we a state, would come to less than that of any other state in the Union. On top of this, the per capita benefits we'd reap from federal aid would be greater than those of any other state of the Union.

The Congress cannot responsibly ignore these expectations. If this is the understanding of statehood in the Congress, then so be it. But if Congress believes, as we do, that statehood should respond, not to the illusory expectation of "economic bonanzas" of federal welfare moneys, but to an express fervent desire by Puerto Ricans to form not only a State of the Union but also an integral part of the American Nation and of the American Soul, if Congress believes that statehood presupposes a willingness to blend into the American melting pot, then this must be made clear to the people of Puerto Rico.

Contrary to the wishes of many, after the transition, statehood would be increasingly and permanently costly, in fiscal terms to the federal treasury, and in human terms to Puerto Rico. For solid constitutional and political reasons, Puerto Rico could not preserve its tax autonomy under Statehood. The imposition of federal income taxes, individual and corporate, would destroy Puerto Rico's continued economic prosperity and self-sufficiency. The Art-oriented manufacturing sector—which is the engine of our economy, sustaining related services and generating close to 300,000 direct and indirect jobs—is critically contingent upon the fiscal autonomy that Puerto Rico would lose under statehood. Every single study conducted on this matter has established that the elimination of Puerto Rico's fiscal autonomy and Section 936 would entail massive capital flight and job loss. For example, CBO concluded that under statehood, Puerto Rico would suffer a permanent drop in real GNP of between 10 and 15 percent by the year 2000, accompanied by a loss of between 50 to 100,000 private sector jobs. (Salaries would decline by 25 percent and transfer payments would constitute a full 40 percent of the economy of the new state.) Higher unemployment makes for higher federal welfare eligibility. Whereas Commonwealth envisions spurring economic development through investment incentives, jobs and self-sufficiency, statehood envisions economic sustenance through added dependency on federal welfare.

In the words of the editors of *The New Republic* "nourishing Puerto Rico's welfare culture while diluting its industrial base doesn't do the Island a big favor." [1]

Mr. Chairman, the status referendum will permanently seal our political future. The people of Puerto Rico have patiently withstood two very difficult years of negotiations and hearings in Congress. Rather than clarify the issues involved and the consequences of each status, the inherently adversary and technical status deliberations have spread confusion. Public opinion polls now reflect more division and indecision than ever before in our history.

Puerto Rico's political parties have publicly agreed that the referendum cannot be held in our election year of 1992. The most far-reaching and important decision in our history must be preceded by an extensive and thorough educational campaign, at a time not conflicting with other campaigns.

On November 17, 1990 Puerto Rico's governing party approved a resolution which established February 19, 1991 as a benchmark for a bipartisan Senate and House agreement resolving the profound substantive differences between both Houses regarding the level of detail in the definitions of each status formula and the commitment to implement the referendum results. The agreement would include the majority and minority leadership of both Houses and of the respective committees of jurisdiction. In the party's view, if by this date there is no substantive agreement—and I want to emphasize the word substantive—the target date of July 4th turns so uncertain and improbable as to render any planning and preparations for the campaign for a 1991 election totally unrealistic. My party and my administration would continue to work fully with you on the legislation, but so as to have the vote in 1993. As President of my party I am solemnly bound by this timetable.

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[1] *The New Republic*, Vol. 202, Number 22, May 28, 1990, editorial, p. 9.

Mr. Chairman, these are historic times, for change is swirling around us. As I speak, brave young men and women from Puerto Rico are risking their lives in the Persian Gulf to uphold the possibility of a new international order. Puerto Ricans, who treasure their U.S. citizenship and its inherent responsibilities, have now fought in five wars in this century. With quiet valor and high courage, they have freely done their part, as loyal Puerto Ricans and as loyal American citizens, to safeguard the common defense and security on which our Commonwealth union rests. Many have paid the ultimate sacrifice a free society asks of her children. It is for us to honor their memory, and their devotion to duty. For their sacrifice is not for any personal preference or status. The young Puerto Ricans risking their lives in the Gulf are not of one mind on the island's political destiny, but they are one in their commitment honorably to discharge the call of the President and this Congress, as all other American citizens.

As the world struggles towards political relationships reconciling the competing demands of unity and diversity, in the forced union of Soviet republics, in Quebec, in the Yugoslav federation, and in the emerging political union in Western Europe, Commonwealth stands as a unique contribution to federalism and a breakthrough in constitutional thinking. It stands indeed as a model for the 1990's and the century to come. As Chief Justice Earl Warren called it "An experiment . . . the newest experiment and perhaps the most notable of American governmental experiments in our lifetimes."

The CHAIRMAN. Thank you very much, Governor Hernández.

Governor HERNÁNDEZ. It was—of course the letter was written in Spanish. I have translated it into English, and of course, I have omitted the names, but they are here available.

The CHAIRMAN. I appreciate that very much. Thank you, Governor.

Now, if the three heads of the parties would come to the table we could proceed with the questioning.

This procedure began in the last Congress at the request—I believe Governor Hernandez first made the request and it was joined in—perhaps it was simultaneously joined in by the three of you seeking to have a status determination—seeking to have self-determination. In a word, is that still your wish? We can describe later, but is that still your wish?

Governor HERNÁNDEZ. Absolutely.

Governor ROMERO BARCELO. It is definitely our wish and not only our wish, we want to work for it and do anything that we can so that it becomes a reality now and not later.

Mr. BERRIOS-MARTINEZ. Of course, it is our wish, but we are worried now, more than what we worried then. We were worried that for very indefinite reasons our wish might not be fulfilled. I do not think many people grasp the importance of us deciding this issue soon, and therefore, I think the process is in danger, and all of you should make strenuous efforts so we can vote on this matter and start the process of decolonization in Puerto Rico.

The CHAIRMAN. In effect you are saying you are not only for it, but you are for it this year.

Mr. BERRIOS-MARTINEZ. Soon. Soon, yes. I am for it and I am for it soon. There is urgency in the matter.

The CHAIRMAN. And Governor you said, yes, definitely.

Governor HERNÁNDEZ. Absolutely.

Governor ROMERO BARCELO. They have said that they are going to withdraw if nothing is done by February 19th. I think they are looking for an escape.

Governor HERNÁNDEZ. No, we have made no statement to that effect.

Governor ROMERO BARCELO. In the statement, the written statement.

Governor HERNÁNDEZ. No, no. What we have said is the following and it was one of the parts that I had omitted, because the chairman asked to cut my remarks short.

The CHAIRMAN. I read that part. Did all Senators read that part?

Governor HERNÁNDEZ. Our position is the following, Mr. Chairman. We share with you your aspiration to enact this bill by July the 4th. We believe that in order for that to happen, because of the differences between the Senate and the House, you need a basic, substantive agreement as to the framework of the bill, soon, at the outset of this session, and we have said by February 19th.

We believe that if that does not happen, the date of July the 4th becomes illusory. It becomes uncertain. It becomes improbable.

The CHAIRMAN. Well, now, the three of you were in my office when we discussed this. I think it was in November.

Governor ROMERO BARCELO. October 25.

The CHAIRMAN. Yes, and we discussed this question of whether to proceed with the process, the process as commenced and is ongoing here. All three of you endorsed that process. We said, well, but we have to get a date for that, which was July the 4th. We all agreed on the date. We thereupon called the—Senator Mitchell, Senator Foley—I mean, Speaker Foley, Congressman de Lugo, and all agreed that we would try to get this legislation by July the 4th, that we realized we could not let this go past the July the 4th recess. That was their commitment.

I have heard no or seen no backing down from that commitment. Although I have heard informally that some members of the House would like to have an agreement before we have a conference. Well, you know you cannot have an agreement on a conference committee before you go to conference. That is the purpose of the conference committee. I mean, if that is a proposal, that we agree before we even meet, then this whole process is a charade.

And I do not hear that being what you are saying. I understand the political difficulties of having a wide and diverse party with different people saying different things. But you would like us to proceed under the arrangements which we began, that is, trying to meet this July the 4th deadline.

Governor HERNÁNDEZ. We would like you to proceed to meet the July the 4th deadline. We must point out that that deadline is predicated on the intention of having a plebiscite in 1991.

The CHAIRMAN. That is correct.

Governor HERNÁNDEZ. Yes. This is the most important campaign and election to be held in Puerto Rico ever. It is already late to begin this campaign and the educational effort that needs to be undertaken with the people of Puerto Rico. Until the legislation is passed, we will not know the terms and conditions upon which each of the formulas will be presented. And therefore, the issues will not have been drawn so that we can begin our campaign. So our problem is with the uncertainty as to this July the 4th date, and at some point, and this we said would be February the 19th, we must have a clear signal as to the fact that this is to happen so that we can begin our campaign and our efforts, understanding that the bill is going to come out in a certain way, not in all its details.

Now, if it goes beyond that, what we see is that it will not happen in July the 4th and that it will happen sometime. And we will continue to work with you, Mr. Chairman, to get that legislation out whenever during the term of this Congress. But we say after July the 4th, then it is going to be really in 1993, because we are all of an agreement that it cannot be in 1992.

Governor ROMERO BARCELO. No, I am not. I am not in agreement.

Governor HERNÁNDEZ. Well, so far you had been.

Governor ROMERO BARCELO. No, I have said it would be preferable to have it before 1992, but I do not see why we could have it in February 1992.

The CHAIRMAN. The point is a 19—a July of 1991 target date for completing the legislation is still agreeable. You would like the February 19th sort of agreement to agree, but you know, we cannot—you understand I cannot take this piece of legislation before it has even passed the Senate and go to—who would I go to in the House? Who speaks for the House? Do I go to the Speaker and say, Speaker, do you like this? He will say, well, look, I have not studied this thing. The House has not considered it. Do I go to Congressman de Lugo? Does he speak for the House? Of course not. I mean, we cannot agree in advance before we even start the legislative process. But I hope—I expect with real dedication and with the concentrated help of you three party leaders in the House, that by the July the 4th recess, we can produce a piece of legislation.

Now, that means that the three party leaders and everyone have to use all of their efforts to help us over there and not say, you know, to anyone in the House that we really do not want to do this. You know, this is all just a charade. This is not a charade, gentlemen, and I am not suggesting that you think that it is.

But I want to put everybody on notice—everybody—that we are deadly serious about this legislation, that we mean to have self-determination. It might not satisfy people, and if it fails, it is not going to be because of this Senator, and I do not expect because of this committee.

And it is not going to be secretly blocked. People who are going to block this are going to have to do it out there in the broad light of day. I want that well understood. I want it well understood that I am speaking of people in Puerto Rico, people in the Congress, people in the Senate, people in the House. They are going to have to do this in the broad light of day. There is not going to be any, you know, dealing of sub rosa. And please understand these remarks do not pertain to these three witnesses.

But I want to be very, very clear on that, because we have invested too much time. The three of you have invested too much time in producing this, and the expectations in Puerto Rico are too important. It may be that the United States Senate or this committee will say no to the whole piece of legislation or to part of the legislation, but those are the chances we take.

Now, and it is a risky business politically for each of you. It is risky. Either—any of the three could win or any of your parties could be downgraded. It could affect the governor's race. It was a decision we made when we got into this, and we made it together. So, well. I think you get my message.

A question of benefits. You mentioned that these are unequal benefits. One of the reasons I feel so strongly that we need to spell out what statehood means, spell out what Commonwealth means, spell out what independence means—that if you do not do that, then the people of Puerto Rico will think that they are going to have equal Federal programs to those of a State. This legislation does not provide that, and the reason it does not is because the Finance Committee, which has jurisdiction over that, designed these Federal programs under statehood and they are less than the citizen of a State would get. We just have to face up to that.

And the reason we have stated this proposal of level playing field and budget neutrality is, first of all, on the question of budget neutrality, I know that Congress is just not going to pay a lot of extra money and raise taxes in order to have a State. And that is—and this legislation does not do that. It is budget neutral.

Governor **Romero Barcelo**. I have no problem with that—with the neutrality aspect.

The **Chairman**. It is, however, very important that the people of Puerto Rico understand that. And that is why I think it is so important to spell it out.

Governor **Romero Barcelo**. What I am pointing out is, first of all that it is unconstitutional to deny a State equal benefits. So the Finance Committee was very concerned about the unconstitutionality of the transition of taxes, yet it does not seem to be concerned at all about the unconstitutionality of signaling out Puerto Rico for different treatment under the Uniformity Clause.

The **Chairman**. Well, I heard what you said about the Uniformity Clause, and I simply do not agree with that. I think we went into the Uniformity Clause with great constitutional experts, as you know, and it—the Uniformity Clause grants the Congress very wide latitude within which to spell out different kind of formulae similar to the one for Puerto Rico. It may not be fair.

Governor **Romero Barcelo**. Except when it singles it out—except when it is singled out and this is singled out. And this is singled out—this is done for Puerto Rico only. As I said, if it were done for counties, that would be a different thing. But it is done for Puerto Rico only, and that is an issue which I think——

We do not have any constitutional response to this. This has not been analyzed constitutionally. We have asked the Secretary of Justice to analyze this for the testimony when they come up and say they are willing to do that. But we have pointed out to them, and I think the committee should ask the Congressional Research Service for an opinion on this. We are going to be working our own opinion of this, because we did not see this——

The **Chairman**. Well, you have two questions here. One is on the question of uniformity. And the other is the question of the phase-in.

Governor **Romero Barcelo**. Right.

The **Chairman**. Whether—it is unanswerable certainly on the question of the phase-in, because so far as I know there has never been a case deciding the question of whether you can phase in benefits. There have been cases on the question of uniformity and they do grant broad latitude.

Now, on the question of your amendment, we discussed—I mean, on the question of the phase-in amendment and the test lawsuit—what we discussed was the question of whether you could have the test and then make the declaration of statehood dependent upon that test. Your amendment takes the opposite, declare statehood and then would seek to undeclare statehood if the test fails.

Speaking for this Senator, that would be unacceptable. I mean once you are a State, you cannot go back and unscramble that egg.

Governor **Romero Barcelo**. Well, the thing is that there is time in between that and the implementation of the taxes which is a sufficient time to have the declaratory judgment before the implementation of the taxes.

There is no way—it becomes extremely difficult to get a standing in the court unless it is a State. So it is by making it a State but not having the implementation yet of the taxes, because it takes over a year, a year or more, for the Treasury Department to get geared up to starting to implement the Federal taxes in Puerto Rico. And during that period of time is when you would have a constitutional question. You have the declaratory judgment.

The **Chairman**. I understand that and I understand the problem with standing. I understand—I mean, there are various constitutional and legal problems, problems in case of controversy—all of those things. But that is why I wanted to give you and Professor Gewirtz and others an opportunity to present to us something that would get the test before the declaration of statehood. I think it is——

Governor **Romero Barcelo**. In the amendment that we proposed as being formed now by their attorney, it is stated that it will be January the 1st, 1993. So there will be time for the Court test before Puerto Rico actually becomes a State, before the proclamation.

The **Chairman**. Well, but the problem is that if it is—I mean, we cannot tell the Supreme Court what to do.

Governor **Romero Barcelo**. No.

The **Chairman**. We can invite them. They are likely not to accept our invitation.

Governor **Romero Barcelo**. And then it provides for moving the date—if the Supreme Court takes more time, it provides for moving the date over 20 days after the Supreme Court makes a decision. So it would still be not a State until after there is a Supreme Court decision.

The **Chairman**. I see. Well, let us study that. I had not seen this amendment before today and I have quickly read it. It does provide for the Court test before statehood is declared, and in the event that the Court is considering it during that time, that it delays the declaration of statehood.

Governor **Romero Barcelo**. Right.

The CHAIRMAN. Very well. We will want to invite the other—particularly the commonwealth group to speak to that.

Governor HERNÁNDEZ. We would like to speak to that, Mr. Chairman.

The CHAIRMAN. Yes.

Governor HERNÁNDEZ. First of all, I would like Mr. Berrocal to tell us if what is—the Governor has been saying right now—is correct. Then I would like to make a statement on the whole idea of this Court test. But I think we have some factual problems as to here, because we understand the amendment that has been presented in a different way. We understand that the challenge is going to come and anticipated after the new State has been admitted and during the 5-year period and the whole structure of the amendment established, you know, contemplating that possibility of a challenge in 5 years, because they need the State to be in place so that they can have a case or controversy. It cannot happen before it is a State.

If Mr. Berrocal would like to address that, because we have a factual problem.

The CHAIRMAN. Briefly, and I would invite a fuller exposition on this in writing. But Mr. Berrocal, would you like to——

Governor ROMERO BARCELO. They have the first draft. They do not have the last draft. That is the first draft they are talking about.

Mr. BERROCAL. There has been an issue of changing drafts, Senators, but the draft we understand, statehood would be——

Governor ROMERO BARCELO. They are going to be arguing something that is not what is in it now.

Mr. BERROCAL. Well, if they are changing drafts, we will gladly comment on the draft that was introduced on the record today, which I gather was——

The CHAIRMAN. Yes, we would invite that. We would very much invite that and let me say the way I believe that the committee should look at this. We should be sure, insofar as we can within reasonable limits, of the legality of that Court test, keeping in mind that the Finance Committee has turned down a similar proposal for a Court test. So, for us to put that in—which I would like to do if we are satisfied that it is legal—we have to have a fairly high degree of assurance not only for us but for the Finance Committee as well. So we would invite you to reply in writing to that.

Governor ROMERO BARCELO. Senator, I would like to—the other issue that you were talking about, treating the State the same. I think what is not perceived here is the fact that can Congress treat a State differently permanently? If we are talking about treating Puerto Rico differently in the programs, say, in a transition, we are willing to accept that. What we feel is after the transition period is over, then the qualifications still apply the way it is in the bill.

The CHAIRMAN. Well, under the Finance formula, the caps would go up as Puerto Rico develops and income goes up.

Governor ROMERO BARCELO. Yes, but it would still apply. It would be the only State to which it would apply.

Senator WALLOP. Mr. Chairman, would you allow me? I think that, Governor, you have either misperceived or mischaracterized what took place in the Finance Committee. It meets the uniformity test. It applies to all States. It particularly applies to Puerto Rico now, because it has the lower income. But were it Mississippi—it is applied to the test of income and were Mississippi to decline and Puerto Rico to increase in there, Mississippi would take the place that Puerto Rico now has under that. So that it is a uniform formula and because it has relevance now only to one, does not mean that it is either permanent or designed that way.

Governor **ROMERO BARCELO**. Senator, it is like which came in first, the horse or the cart? It is obvious that the formula is developed to apply to Puerto Rico.

Senator **WALLOP**. I suggest that it was not. And I suggest that there is hardly any other way in which to reach it.

Governor **ROMERO BARCELO**. Why is not then applicable to all counties instead of just a State?

Senator **WALLOP**. To counties?

Governor **ROMERO BARCELO**. Yes, to counties, throughout the Nation.

Senator **WALLOP**. Well, I mean I do not suppose any of our formulas have applied to counties.

The **CHAIRMAN**. I think there are really two answers. First, I think you are arguing fairness rather than legality, at least legality as I perceive it based upon the constitutional scholars that we heard, which is not to say that fairness is not a very strong argument. More important than that, it is what the Finance Committee has given us and it is based upon a budget neutrality. And statehood, if it is going to be offered by the Congress, in my judgment, must first of all, have the imprimatur of the Finance Committee at least going on the floor, and secondly, it must be budget neutral because, if nothing else, it would violate the budget agreement that we have had here, which is budget neutral. If you put in something that is going to cost more, you have got to pay for it.

Governor Romero-Barcelo: Let me say it does not violate the budget neutrality because there will be more income coming in and there will be sufficient income from the taxes to pay for the increases as a State. So the budget neutrality was not the criteria. That is what I cannot understand. The only criteria I can see that was followed was to make it because they did not want to give any more to the commonwealth. They wanted to hold statehood to the same as commonwealth.

That is what it looks like because there is money in the revenues to pay for the full program and still be money left over for the Treasury, U.S. Treasury.

The **CHAIRMAN**. Well keep in mind that the commonwealth proposal will have to pay for its increased benefits, and that is not in the draft because we did not have the Finance Committee's advice on that. I think everyone understands that.

Governor Romero-Barcelo: They could not get the money, whereas our money is available to pay for——

Governor **HERNÁNDEZ**. Mr. Chairman, it does not present any problems, as to revenues, in terms of the adjustment that has to be made to 936. I believe the Finance Committee is addressing itself to proper social policy of these programs, depending on the income levels of the different States. That is their concern.

The **Chairman**. That is correct. Well, I have some more questions, but let me turn it over to Senator Wallop at this point.

Senator **Wallop**. Mr. Chairman, thank you. I do, too, and given the length of time of the morning proceedings, I would hope that we might be able to submit some questions to the witnesses, because already it has raised the level of interest and intensity.

I begin by saying that I consider each of you my friend. Your hospitality to me in Puerto Rico was unequaled, except by each other's.

[Laughter.]

Senator **Wallop**. Also, for outward intents and appearances, you appear to be friends with each other, and you have given three eloquent statements, each pointing to the problems created by the others' choice of status, which has made it an interesting dialogue, and predictable. I mean, obviously, each would want to promote the status choice of his own.

But you have raised all kinds of interesting questions of which Senator Domenici spoke and others. You have raised questions of transitions and the lengths of them, fairness, citizenship, Olympic teams, language. Your warnings, Senator Berrios, are clear and well spoken, and the experiences of the world have got to be taken into account.

You have the question of 936, whether commonwealth, which is a choice, in my view, to retain the choice can be made permanent because it seems to me that the answer to that is that as long as there is one choice or another still remaining on either side of that, then permanence simply cannot be guaranteed. You cannot bind a future generation into a status.

But be that as it may, I look back at some of the States represented here and I do not know the terms and lengths of Louisiana's admission. But the debate in New Mexico, after they had petitioned for statehood, was nearly half a century. I do not know how long it was with Oklahoma. It was a good long decade for the State of Wyoming, and over the issue, I might add, that we were culturally aberrant to the rest of the Nation because we are——

The **Chairman**. Still are.

[Laughter.]

Senator **Wallop**. Well, we are, but in those days we were aberrant because we were the only democratic government in the world that allowed women suffrage, and that caused some level of heartburn in the Congress.

So the first question is, has Puerto Rico ever petitioned for statehood?

Governor **Hernández**. Never.

Governor **Romero Barcelo**. No, sir. I would like to add to that the following. One of the problems that we have had in Puerto Rico is that people have been told repeatedly by the independentistas, and by the commonwealth government, and by Munoz-Marin, who was a leader in Puerto Rico for 28 years and was a widely respected man, who told the people of Puerto Rico that statehood would, first of all, be economically disastrous for Puerto Rico and that if we asked for it it would be denied. And that has been their story, that if we asked for statehood, it would be denied.

The people of Puerto Rico cherish their U.S. citizenship so much, and they want to be part of the Nation so much, permanent union, that they felt that to ask for something like that and be denied, it would, out of pride, we would have to go the other road and go towards independence. So they were afraid of asking.

It was not until the first hearings were held in Puerto Rico of this committee back in 1989 that the people saw on television, saw Senator Johnston, and saw Senator McClure and Senator Moynihan earnestly addressing themselves to this issue. And they saw for the first time that we had the opportunity to become equals, equal politically and equal economically. And that immediately changed the whole spectrum, political spectrum in Puerto Rico.

Whereas, when Hernandez-Colon started this petition for the plebiscite, the polls showed that the commonwealth was supported by 52 percent and 41 percent supported statehood, now the polls show that 51 percent support statehood and 42 percent support commonwealth, because people then became aware that if we ask for it we are going to get it. We can get it and that made a big, big change.

Senator WALLOP. But that brings on my next question. You can see clearly the tension that exists between the two Houses in Congress. The statement of the House subcommittee chairman, the commitment of Senator Johnston puts us already at odds with each other. My question is this, what is to prevent Puerto Rico and Puerto Ricans from conducting their own referendum?

Governor ROMERO BARCELO. Precisely the reason that this is so important that it comes from Congress is so that people will understand that if we ask for it, Congress will not just shut the doors in our faces.

Senator WALLOP. I think I have detected each of you saying that this ought not to be self-executing, so you have got no guarantee. And the debate that took place for the petition of the State of Wyoming, the State of Oklahoma, the State of New Mexico, Hawaii, and Alaska, all of those took a long, long time, even after the petition.

There was no guarantee that because one petitioned the results would be accepted. There is no guarantee. I mean, that is one of the problems that I have had and expressed about the piece of legislation that is in front of us, because we believe so strongly in democracy that I think that when a choice has been made that it ought to be accepted.

Governor HERNÁNDEZ. Senator Wallop, may I address that? And in addressing that I think I will answer also something that has been said by my colleague, which is not entirely correct.

In 1963, a U.S.-Puerto Rico Status Commission was created, and members of this committee—Senator Jackson, Senator Javitz, members of the corresponding House committee, were members of that U.S.-Puerto Rico Status Commission. Also, distinguished members representing the administration and the public interest.

The Commission was appointed by the President of the United States and by the Governor of Puerto Rico under congressional legislation. Now, that committee studied the problem of Puerto Rico's status, and it rendered the most comprehensive report that has ever been rendered in this matter, addressing the economic aspects, the cultural aspects, the political aspects, sociological—every aspect was analyzed.

Now, in that report, that Commission, representing the United States, stated clearly that statehood was an available option to the people of Puerto Rico. They said so clearly. So, it is not true that the first time that the people of Puerto Rico have ever found out that the United States would give them statehood was in the hearings back in 1989. This was in that committee's report.

Now, the committee recommended a plebiscite to be held in Puerto Rico to choose between the three options that were offered in that report. We held the plebiscite. We held the plebiscite, and commonwealth won. It got 60 percent of the vote. Then a procedure had been set up that was called the Ad Hoc Committee procedure to implement the results of that plebiscite.

Senator Johnston was a member of an Ad Hoc Committee created by President Nixon and myself back in 1974 to develop the commonwealth to broader self-government. That committee rendered its report. The report then was incorporated into legislation presented to Congress and nothing happened. Nothing happened.

And after having lived that experience with a plebiscite in which the people of Puerto Rico, of course, were deeply involved, upon recommendations of a commission appointed by the President of the United States and the Governor of Puerto Rico, under a law of Congress, after that experience, then we have come to realize that we need a prior commitment from the Congress. That is why we are here.

Mr. **Berrios-Martinez**. Senator Wallop, if I may add to this, the fact, the historical fact is that the United States Congress is not an innocent victim to this process, not only because of the reason just referred to by Governor Hernandez Colon, at the beginning of the century in innumerable locations. We petitioned for innumerable things and nothing has happened. Nothing ever happened.

The fact is that the U.S. Government has an obligation because nobody invited them to come to Puerto Rico to start with. So there is an obligation that the United States should discharge before its own image as a freedom-loving people and before the world.

It seems to me even a little strange that something totally different from what is happening in Lithuania is happening here. There, the Lithuanians got together and asked for something and the central Soviet Government said, nothing doing. It is what we say.

Now, we are telling the central government, go ahead and say something because we have already said, and during 92 years you have paid no attention to us. So if you let this slide, what will happen in Puerto Rico?

Well, anything can happen in the future of Puerto Rico, but it is your obligation to speak and to speak clearly because we are tired of waiting. The three of us are tired of waiting. The people of Puerto Rico are tired of waiting. Now is no time to say, go back and you arrange things between yourselves and come out. We have done that hundreds of times, dozens of times. We do not want to do that anymore. We want you to fulfill your obligation now.

Senator **Wallop**. Well, I might just say that the history of the country is that nobody has ever been turned down. No territory has ever been turned down which had petitioned for statehood.

Mr. **Berrios-Martinez**. Because they were not nations. Because they were territories of American citizens or of people coalescing around the American way of being.

Senator **Wallop**. It is not my purpose to engage in an argument but to try to develop some information here.

Mr. Chairman, I have got two quick questions and then I will submit the rest in writing. One is to Governor Hernandez and one is to Senator Berrios.

Governor, you have testified that the new provisions, or the modified commonwealth status, those provisions are designed to improve upon the current Federal relationship. But as the legislation now stands, they would only go into effect if commonwealth actually receives a majority vote and Congress subsequently enacts them, and then they are subsequently approved. Assuming that these are important approvements, would you support enacting them independent of any referendum?

Governor **Hernández**. Yes, I certainly would. The problem lies in the existence of other Puerto Ricans who desire a different form of status. And therefore, given that controversy, we have come here to ask for a plebiscite. But certainly, if the Congress is willing to go forward with these amendments, which we believe as a matter of sound policy should be made, then we are ready and willing to go forward.

Senator **Wallop**. In that case then, should we not just consider these provisions as separate legislation on their own merits, enact then as Congress decides, and then limit the referendum to a choice of statehood or independence, with a "none of the above" option for those who support the present relationship.

Governor **Hernández**. We could explore that. That would mean that we would have in place the new commonwealth as we are seeking it. And given that situation, a referendum would be held between statehood and independence. I might explore that.

Mr. **Berrios-Martinez**. Senator, I might add, you have been speaking since the beginning of your intervention, with all correction, regarding your yearning for democracy. I must remind you that those of us who believe in something different from that in the last election got a majority of the vote in Puerto Rico. So we are already a majority against a proposal that would leave us out of any consideration.

Senator **Wallop**. No, you would not. It would be that the commonwealth was not and that the referendum would be conducted over the issue of statehood or independence. The status of the commonwealth exists.

Mr. **Berrios-Martinez**. But you said before—no—I thought you said——

Governor **Hernández**. No, no. The new commonwealth.

Mr. **Berrios-Martinez**. I thought you said the new commonwealth proposed in this bill.

Senator **Wallop**. Well, I am just saying that it is my view that if those are the positions of Governor Hernandez, that they stand on their own and that Congress ought to have a say as to whether they should take place or not.

Mr. **Berrios-Martinez**. You mean commonwealth would win the plebiscite without there being a plebiscite?

Senator WALLOP. Yes. I am just saying, the gist, the thrust of the question is, are they important? Do they stand on their own or do they stand only in so far as they are an inducement to the vote for commonwealth. In other words, I am talking about a level playing field.

Mr. BERRIOS-MARTINEZ. I understand.

Governor HERNÁNDEZ. We sustain that they stand on their own. We think that they are good, sound policy that should be adopted independently of a plebiscite. However, given the fact that there are these other two aspirations of the people of Puerto Rico, we have felt that it is the proper thing to do, to bring it through the plebiscite method.

The CHAIRMAN. If the Senator would yield, I might say that if we are going to have self-determination, then I think commonwealth ought to be legitimized by the vote of the people, and that is why the new, improved commonwealth, if that is the word, is made subject to the vote of the people. Now, if commonwealth is voted for, then the Congress, I am sure, would come back in——

Senator WALLOP. I understand that, but it is the point of the two other proponents of different statuses that that is a pot-sweetener that distorts the level nature of the playing field. That was the thrust of my question.

Unfortunately, it is really getting late and I have just one quick question, if I may, and that is to Senator Berrios. And again, hat off for an eloquent, passionate statement, and I appreciate your desire for independence as soon as possible.

But rather than approach it in title III, has your party considered the model of the Micronesian compacts of free association, which transfers sovereignty to Puerto Rico with the right of unilateral termination and gives a permit to lengthier transition, and perhaps answers some of those vexing questions of citizenship denial and other kinds of things? That is just a question. Have you considered that?

Mr. BERRIOS-MARTINEZ. We struggle for independence and we shall always struggle for independence. But if the United States decided, because of its own interest, that a free association pact, similar to that described by you, was going to be granted to Puerto Rico, definitely, that would be a step that would get us closer to independence, and thus, we would not oppose the granting of that pact, even though we would not fight for it. We will keep fighting for independence until independence is in Puerto Rico.

Senator WALLOP. Well, in fact that does lead, as it will in the case of Micronesia, to independence, but it provides a little more flexibility in terms of immigration and Federal programs and the transition.

Mr. BERRIOS-MARTINEZ. That is the same thing if you asked me, which would be a very good idea for Puerto Rico to finish off its drug problems, and if there was a way to finish it off, I would say yes. Before independence? Of course, yes, I would like to finish it off now. There is some relations between that and the status question, but the same thing applies. It would be something better than what we have now.

Governor ROMERO BARCELO. Senator, I would like to make a comment because Mr Berrios——

The CHAIRMAN. Please make it very, very quickly because I want to take care of our two Senators.

Governor ROMERO BARCELO. Mr. Berrios made many statements about statehood and the language and nationality. I first want to call attention. He is speaking for 5 percent of the population. That is what independence has gotten in the votes. And that the majority of the people of Puerto Rico want the permanent union and want to have U.S. citizenship.

Nationality is a matter of definition, and people have defined it in different ways. It is difficult to ask a Puerto Rican to be as identified with a Nation as anyone living in the 50 States because of the following. Before any one of the States, when they were territories and they became States, they could not have been identified as they are now. Why?

Because every time they looked at the flag they understood that that was the Nation's flag, but they were not represented in that flag. So every time the Puerto Ricans look at the stars and stripes, they see only 50 stars and it is not the same as if they were to look at a flag and see 51 stars. Then identification is symbolic so it becomes greater when that occurs. And I have no doubt about that.

But right now, to say Puerto Rico is being kept out or we are being denied equal rights, equal participation, and have the same identification as a U.S. citizen, it is very difficult.

The CHAIRMAN. Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you. I want to compliment all of our panelists as representatives of their parties. I think you have all done an excellent job in presenting your views. I appreciate it.

Let me just touch. Governor Hernandez, you mentioned in response to Senator Wallop's question, that there was a referendum or a vote. What year was that?

Governor HERNÁNDEZ. 1967.

Senator NICKLES. In 1967. And you said the Commonwealth Party won 60 percent of the vote?

Governor HERNÁNDEZ. Sixty percent of the vote.

Senator NICKLES. Was the other option statehood or independence?

Governor HERNÁNDEZ. Statehood and independence. Statehood got 49 percent. I am sorry, 39 percent, and independence got a fraction of 1 percent. The Independence Party boycotted the plebiscite.

Governor ROMERO BARCELO. The statehood party also boycotted the plebiscite.

[Laughter.]

Senator NICKLES. Governor Romero, that means if you do not win, you boycotted it?

Governor ROMERO BARCELO. No, no. The statehood party boycotted the plebiscite. The Statehood Republican Party boycotted the plebiscite and that is a fact.

Senator NICKLES. I will ask you a question in just a second. I have mentioned my concern about the compatibility of Puerto Rico with the United States as a State. By compatibility, I am talking about the ability of Puerto Rico as a State because I have looked at Puerto Rico as a State, more as a friend, a neighbor, a territory, but not quite a State. And I have heard you mention that distinction. You want to be equal. And I have heard you mention quite eloquently that certainly States should be on equal benefits.

Governor **Romero Barcelo.** Equal responsibilities and obligations.

Senator **Nickles.** I understand, but I see significant differences, and correct me if I am wrong. There are differences in the culture. There are differences in the language. There are differences in the heritage, and significant differences in geographical location, 1,000 miles or something from——

Governor **Romero Barcelo.** We are closer to the Nation's capital than most large cities in the States, in the other States.

Senator **Nickles.** But most of the United States is contiguous, and Puerto Rico, there is a significant distance.

Governor **Romero Barcelo.** Nowadays, with an airplane and the fast modes of transportation, and instant—audiovisual communications, I think that is not—the fact that the ocean is like a little lake nowadays. Hawaii is much, much further. Alaska is separated, also, from the Nation. There are 2.5 million Puerto Ricans living in the United States. There are more similarities between the life and behavior of Puerto Rico and the people in Florida than there is between the people of Oklahoma and the people of Vermont.

Senator **Nickles.** That is not quite correct, but I'm not going to debate you. The point is I see Puerto Rico as more of a Latin country.

Governor **Romero Barcelo.** Oh, yes, it is Latin. We are a Latin island.

Senator **Nickles.** And I am very interested in this being. If we have a merger, if we have Puerto Rico become a member of the Union, I want it to be a good, long-lasting, permanent union that is beneficial, not only to Puerto Rico, but also to the United States.

Governor **Romero Barcelo.** Definitely.

Senator **Nickles.** Part of my concern, I heard you make a great amount of your presentation on the need for equality and benefits, as this would certainly be of benefit to the people of Puerto Rico. I understand that and certainly if I was a representative for Puerto Rico or if I was a Senator for Puerto Rico I would want that to be the case.

I am concerned, as a United States Senator, and a person that serves with Senator Domenici on the Budget Committee, and also serving on the Appropriations Committee with Senator Domenici and Senator Johnston, I am concerned about the cost. I am concerned about the possibility of a welfare State, which to some extent, if you look at the amount of benefits as you showed on your enclosed statement, that we already have. I am concerned about having a system that encourages entrepreneurship, not welfare dependency. And I see, over the last couple of decades, maybe we have gone too much towards a welfare dependency, a welfare-type State.

Senator Domenici and I have a common bond in the fact that we have a lot of indian tribes and large indian populations in our States, and frankly, a lot of the socialistic, welfare-type things that we have done in the past have not worked very well, and it has not been to the betterment of indian tribes or indian people. I do not want to find the same thing happening to Puerto Ricans. And I think to some extent, it has happened.

Governor **Romero Barcelo**. Let me address myself to that, Senator. In the first place, Puerto Rico is now a commonwealth, a welfare commonwealth. In other words, there is a lot of dependency in Puerto Rico at this point in time because there is still a lot of poverty. Even though Puerto Rico has a higher per capita income, and it has a higher standard of living than any other Latin American country south of the Rio Grande, so that Puerto Rico, even though the limitations that we have, even though we have a large density of population, even though we have no natural mineral resources, because we are part of the Nation and because we benefit from that economic relationship, we have the highest standard of living in Latin America. If we were to be independent right now, our standard of living would be much, much, much lower than it is right now.

If Puerto Rico becomes a State, there will be a benefit to the Treasury of the United States because the taxes that will be paid by the people who are not now paying any Federal income taxes, and by the 936 corporations, will be more than the additional amounts that will be received in Puerto Rico in the SSI and the food stamps and all the other welfare programs, so that it would not be bad for the Treasury.

Vis-a-vis commonwealth, statehood is beneficial economically to the Nation, whereas commonwealth can only keep on costing because they never pay into the Treasury and that also undermines the self-respect of the people of Puerto Rico. We do not pay our way.

Senator **Nickles**. I need to interrupt you, and I know, Senator——

Senator **Domenici**. If you would yield for just a moment. Mr. Chairman, I would just like to stay, but I do have an obligation to host about 15 or 20 Senators at one time in my office and they are arriving.

I want to make a couple of observations and then ask a question. First, let me say that I come from a State that is unique. 40 percent of the population of New Mexico are Hispanic. We speak of culture. You can go to some parts of New Mexico—not every part, but many parts, and so might you go, Senator, with me. I will take you, because you have a very serious concern about the protection of culture and language.

I will take you to parts of New Mexico which you will leave saying this is exactly like it was when Spain occupied it. Toda la gente habla espanol. Everything is identical. However, they are all Americans now and part of the United States. They go to our schools and preserve their language in some way.

Now, they wanted into the Union. In fact, let me tell the Puerto Ricans. They asked us in 1850, and we let them in in 1912. We—I should not say "we." I was not born, Mr. Chairman. Somebody else was doing the work over there, and somebody up here was slow at the trigger.

New Mexico even adopted a constitution in preparation for statehood. We were in a constitutional convention, I say to my friend from Georgia, preparing for statehood, and this Congress still did not let them in. After they went to work at it, they did. But we have never turned down anyone that petitioned. First point.

My concern is not only economic, and I have tried to just explain it to you that it is culture, it is language, it is religion. En Nuevo Mexico casi toda la gente que son de extracto espanol son catolicos, que no. They still are, and they reverend the Bishop, who incidentally is Spanish also, in a very inordinate way, much different than others do in the United States. We are still a State.

Now let me move to economics, because I am concerned, and I believe the people of the country are going to ask some questions about economics as we move through. We put a preference in to see if we could bring business to produce jobs.

Mr. Chairman, I happen to know something about it, by accident. We made a mistake, in my opinion. We should have done what the Treasury recommended when we put it in. There were two proposals. Congress adopted one that said we will give corporations a big tax preference on their tax liability. Treasury said adopt one that would give them a big preference for the number of people they employ, based upon the salary paid—magnificent proposal. They did not do it.

Why do I know? Because I am trying to do it for the Indian people, saying let us give it a jump start for about 15 years, and I said, let us do not do that one, let us do a corporate tax credit based upon employment.

It gets me to the point, what actually is the reason? I do not expect an answer from you, but we have got to get an answer. What exactly do economists and real neutral observers—what do they say is the reason that Puerto Rico has still not progressed economically per capita income? To speak to the language of Senator Berrios, who said that you have only a 40 percent labor participation, why?

I think that is the question some of us have to answer, because we are all here, I think, saying whatever we do, for God's sake, we want it to be better, I hope. I hope none of your positions want it to stagnate at this level of economic prosperity. We can hardly use the word as it relates to other nations that are developed, but use it.

So I am very interested in knowing whether it is the commonwealth status that has created this, and that you have produced some laws that cause it that statehood might change. I am interested in knowing, for those who are thinking of independence, why would they think independence might change that? Not because I am going to make the decision, because hopefully we are going to let you make it. But I think the American people, ultimately, in ratifying it and pushing us to ratify it, might ask those kinds of questions.

I do not believe they want to take in a State unless they are convinced that there will be, really, economic opportunity, the opportunity for the people there to gain an economic status over the years, and clearly I would—if no one else, I want to know, and put it in this record eventually, why is it that we have not made more progress, and what might make the most progress in the eyes of people who are neutral, just so I can speak to it. But if I were in your shoes I would want to know also, because I believe that is what people might be asking today.

Governor **Romero Barcelo**. Senator, I have some answers to that. I believe that one of the problems that we do have is that commonwealth and the unhealthy relationship with the rest of the Nation—the fact that we are dependent but we do not contribute, that we are citizens of a democracy that is the example of the world yet we do not participate in the democracy and we do not have the right to vote—is undermining the self-esteem of the people of Puerto Rico.

Senator **Domenici**. Well, I have heard you say that loud and clear today, Governor, but I want to tell you honestly I am not at all convinced that when it comes to economic prosperity, opportunity, entrepreneurship, why we do not have more economic growth on the private end, I am not at all sure that that thesis holds water.

The **Chairman**. Senator Domenici, if you would yield, in Governor Hernandez's statement, he points out the growth, a $342 per capita income in 1950, $6,060 today. Exports boomed from $235 million in 1950 to $16,355,000,000 in 1989. Telephones, 35,000 to—now, the question is, and it is a fair question, whether this remarkable growth would have been greater under an alternative system.

There is no question, though, that there is remarkable growth, and I think we ought to get our staff economist to work up some charts on this, because I know he is neutral.

Governor **Hernández**. I suggest, Senator, that you check our growth, our rate of growth against the rate of growth of the 50 States, because that will show you the capability of commonwealth to provide a much greater rate of growth.

The **Chairman**. We are going to have our staff economist do that.

Mr. **Berrios-Martinez**. I would like to remind Senator Domenici that, first of all, New Mexico imposed the use of English as an official language when it became a State. He should remember that, first. Second of all, I would like to know how many poets/philosophers writing in Spanish New Mexico has. It has very quaint and folkloric clusters which deserve all our respect, but those are isolated remnants of past-gone cultures, not lively cultures.

The best example of why New Mexico cannot be compared to Puerto Rico is the honorable person which is representing New Mexico. You would not stand a chance of being a municipal assemblyman in Puerto Rico if you did not change totally your ethnic extraction and, second, learn to speak Spanish, not like Tonto and the Lone Ranger, but like a Spaniard.

That is why Puerto Rico is a nation, and it is not the remnants of an outmoded culture. This is said, with all respect, to an outpost civilization, which New Mexico was. Puerto Rico is a homogenous nationality. This is not sustained by 5 percent of the Puerto Rican people. Governor Hernandez Colon practically quoted my words, here, and we did not even talk to each other, and Governor Romero has included in his party platform the fact that the Spanish language and heritage, not the remnants of Tonto and the Lone Ranger, are an intimate and inalienable part of the Puerto Rican nation.

Senator **Domenici**. I did not give you that, Senator, to say they are exactly the same, and I did not give it to you on the basis of the Lone Ranger and Tonto and that I speak Spanish poorly or not so poorly. I understand it very well, and it has nothing to do with other than the fact that I try to represent my people and they speak it, so I learned it. That is all.

But let me just suggest, what I was saying is that somehow or another, with a very large percentage and the retention of a very significant portion of the culture, it is continuing in that way. It is not exactly like you, but there is a significant ability to continue that culture, even within the statehood that has been granted to New Mexico. Only for that.

Mr. **Berrios-Martinez**. Fine. If that were so, we would vote 98 percent against statehood if it would be a State like New Mexico, I can assure you of that, because Governor Romero's party will run away from that statehood. If not, they would not stand a chance in Puerto Rico. That statehood we do not want.

Governor **Romero Barcelo**. Senator, on the issue of development, I would like to point out that it is good to compare, for instance, what happened to Hawaii, when it became a State. In tourism alone, Hawaii in 1959 had 8,000 tourism rooms, and now it has 64,000. Puerto Rico in 1959 had 5,000. Now we have 8,000. The growth is completely disparate. What Hawaii has developed is much more.

The **Chairman**. Senator Fowler, with apologies to you. I really did not realize you had come in.

STATEMENT OF HON. WYCHE FOWLER, JR., U.S. SENATOR FROM GEORGIA

Senator **Fowler**. Well, I am in here 2 hours, but I am glad to be back, Mr. Chairman, on your committee. I am here—I have been here because of my friendship with so many people, American citizens in Puerto Rico. I am very pleased to start back my work on this committee on an issue of this importance, and we will try our best to make it legislation that will enable the people of Puerto Rico to make the right decision for their own destiny.

After hearing my last three colleagues from Oklahoma, New Mexico and Wyoming, as well as the distinguished chairman from Louisiana, representing one of the original 13 colonies, if we had to do it over again, we would not let anybody in.

[Laughter.]

Senator **Fowler**. In the meantime, we will do our best, Mr. Chairman. I look forward to working with you to enable the American citizens in Puerto Rico to make the right decision for their people.

Thank you very much.

The **Chairman**. Senator Fowler, thank you very much.

Gentlemen, you have not disappointed us. This has been very informative, very lively, and there will be questions in writing for you. This is not the last process in this ongoing process, what we do here in the committee, and I would hope to have one more day of hearings and then go to markup—an early markup on this—and be on the floor early this year so that we would be prepared to meet the House in a conference committee.

I speak to the House, now, through the media, in saying that a conference committee is always an open committee. We are always flexible in any conference committee, and we will of course not only consider what the House has to say, in the nature of things we must consider and compromise and come up with a proposal. That can be done this year, if we all apply ourselves. I am confident it can, but the difficult things about this legislation have been done. Having it matriculate through the Finance Committee and through the Agriculture Committee, those are very difficult things, and that is the most difficult part of this.

As far as the House committees of jurisdiction, they can be represented in the conference committee and we frequently do that in legislation—divide up, have conferees consider the various titles. I urge the House to do that. We can do it this year.

There is never a perfect time for status. I mean, we are never going to come to the time on the calendar when we say, right, this is the year, and everybody is in agreement that we are going to use a certain procedure. It just does not work that way. You are not going to get all you want in any of the three statuses.

I mean, we have already heard the various definitions criticized, and there is no way to satisfy everyone. We must do the best we can, but we are in the best position. We are closer now than we have ever been. Believe me, we can do it. We really can do it.

We can certainly do it in the Senate, and the House can clearly do it, pass their legislation of last year and meet us in conference. And we have got time. We have got plenty of time in conference to work this thing out and to really give the people of Puerto Rico a choice—not a perfect choice, because perfect things do not exist, politically, on the face of this earth.

Mr. BERRIOS-MARTINEZ. Yes. I just wanted, Senator Johnston, to state that I am submitting for the record some communications we had with the Senate Finance Committee regarding this issue, which should be for the record.

The CHAIRMAN. Yes, that will be put in for the record.

[The information referred to follows:]

PUERTO RICAN INDEPENDENCE PARTY,
October 16, 1990.

Hon. LLOYD BENTSEN,
Chairman, U.S. Senate Finance Committee.

DEAR MR. SENATOR: This letter is in request for a minor clarification with respect to a sentence appearing on page 37 of the Report on S. 712 issued by the U.S. Senate Finance Committee.

The aforesaid sentence, in referring to the statutory and regulatory parameters that a foreign tax must meet in order to qualify for foreign tax credit treatment, states:

> "Under these rules, for example, the tax must not be refunded or otherwise used to provide a subsidy to the taxpayer or any related person, or any other party to the transaction or to a related transaction."

The foregoing passage is evidently meant to address the rule contained in section 901(i) of the U.S. Internal Revenue Code, which reads:

> "(i) Taxes used to provide subsidies.—Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the meaning of section 482), or any party to the transaction or to a related transaction, and

(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax."

Yet, by only referring to the statutory language or section 901(i)(1)—without qualifying such language with the specification appearing in section 901(i)(2)—the aforesaid sentence in the report could lead to the unintended impression that all kinds of subsidies, and not just those which are "determined . . . by reference to the amount of such tax, or the base used to compute . . . such tax," will cause a foreign tax credit disallowance.

Your clarification to the effect that the report language refers only to those subsidies covered by section 901(i), as specifically defined in section 901(i)(2), will be most appreciated.

Very truly yours,

RUBEN BERRIOS-MARTINEZ.

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, October 23, 1990.

MR. RUBEN BERRIOS-MARTINEZ
Puerto Rican Independence Party, Puerto Nuevo, PR.

DEAR MR. BERRIOS: Thank you for your recent correspondence.

As you pointed out in your letter of October 16, the subsidies which will trigger a foreign tax credit disallowance are those covered by section 901(i) of the Internal Revenue Code (and the implementing regulations, rulings and judicial decisions).

By referring in a general manner to the terms of said provision, the Senate Finance Committee Report on S. 712 does not mean to set forth any conditions beyond those in the statute (and implementing regulations, rulings and judicial decisions).

I hope this clarification satisfies your concern. Again, thank you for taking the time to contact me.

Sincerely,

LLOYD BENTSEN.

The CHAIRMAN. Now, if there are further submissions for the record, please let me know. We will have the questions, and certainly we invite, we solicit, your response to the question of the lawsuit and the admission date for statehood.

With that, I want to thank you all very much. The next meeting of the committee is a week from tomorrow, February 7.

[Whereupon, at 12:58 p.m., the committee recessed, to reconvene Thursday, February 7, 1991.]

[A statement for the record submitted by Senator Shelby follows:]

PREPARED STATEMENT OF HON. RICHARD C. SHELBY, U.S. SENATOR FROM ALABAMA

Mr. Chairman, my remarks will be brief. It is a pleasure for me to participate in this hearing today. I am new to the Energy Committee, but I am familiar with the issue of Puerto Rican plebiscite. I know that you, other committee members and staff put a great deal of work into this issue in the 101st Congress. I commend you for your efforts in once again bringing this matter to the forefront for consideration by the committee and extend a warm welcome to the leadership of the three parties represented here today.

Each of our witnesses brings his own perspective to this issue, reflecting the deep division of the Puerto Rican people. I know that all of you have worked diligently for a number of years seeking some sort of resolve to this question of the political status of Puerto Rico.

S. 244 calls for a referendum of the citizens of Puerto Rico on this question of political status and effectively defines the status alternatives. I agree with a number of my colleagues that this is their right. However, a plebiscite will not be new to Puerto Rico.

The greater question that we must answer is not that of status, but viability. Can we, in Congress, in good conscience obligate ourselves to implement any option that in the long run will be to the detriment of the Puerto Rican people, their economy, or the rich cultural heritage of the islands? Despite the fact that this legislation is not binding in a legal sense, the language of the bill leaves Congress with an even more important moral obligation to implement the result of a plebiscite, whatever it might be.

I hope that this is a question that can be resolved as we work through the complexities of this legislation.

Thank you.

POLITICAL STATUS OF PUERTO RICO

THURSDAY, FEBRUARY 7, 1991

U. S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:33 a.m., in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The committee will come to order.

Today the committee is pleased to have as its guest the Honorable Dick Thornburgh, Attorney General of the United States, who will present the views of the administration on S. 244, the Puerto Rico Status Referendum Act.

I believe that it is important to recall the President's endorsement of the request by the Puerto Rican political leaders that the people be consulted on the island's political future. In his first address to Congress almost exactly 2 years ago, on February 9, 1989, the President urged Congress to enact legislation that would allow the people of Puerto Rico the right to decide their political future in a referendum. Since that time, tremendous progress has been made on legislation to provide for such a referendum.

This committee has held 9 days of hearings and 3 days of markups on this legislation. The Finance Committee has also put in long hours to develop realistic economic transition provisions. Other committees, including Agriculture and Judiciary, have also made contributions to strengthen this bill and broaden its support.

It is my hope that the administration's comments today will enable this bill to be further refined and move it closer to enactment by the July 4 target date. The presence of the Attorney General as our witness today demonstrates that the administration shares this committee's continuing commitment to this legislation and to self-determination for the people of Puerto Rico.

I understand that the Attorney General has only a limited amount of time which he can spend with us this morning but that Mr. Stuart Gerson, the Assistant Attorney General for the Civil Division, and several other agency representatives will remain to continue discussion with the committee after the Attorney General leaves.

Senator Wallop was called to the White House this morning and sends his regrets. He will be here as soon as the President will let him return. I am sure you understand.

Mr. Attorney General, thank you very much for coming. It elevates the status of this legislation that you are here. Please proceed.

STATEMENT OF HON. RICHARD THORNBURGH, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY STUART GERSON, ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Attorney General THORNBURGH. Mr. Chairman, Members of the committee, let me first express our appreciation for your stalwart support for the process of self-determination and your role as a champion of this particular legislation, the Puerto Rico Status Referendum Act. I appreciate also your accommodation of my somewhat tight schedule today, and I assure you that through Mr. Gerson and others who are here we will exert ourselves to provide you and the committee with a full view of the administration on this important legislation.

I am pleased to be here today to testify on behalf of the administration regarding S. 244. This important bill provides for a referendum to be held in Puerto Rico to allow residents of Puerto Rico to express their preference of political status from among the options of Statehood, Independence, and continued Commonwealth status. Congress would then consider appropriate legislation to implement the status option chosen. This implementing legislation would take effect upon ratification by the people of Puerto Rico in a separate vote.

This President and his administration strongly favor the right of the people of Puerto Rico to choose their political status by means of a referendum. The President has repeatedly declared that the people of Puerto Rico should have the right to determine their political future. In his view, it is inconsistent for us to "applaud the exciting and momentous movements toward freedom in Eastern Europe, Latin America, and elsewhere while refusing to grant to our own citizens the right to self-determination."

The people of Puerto Rico should have the right to chart their own political future by engaging in the fundamental act of democracy, a free election. We believe that the approach of S. 244, with certain necessary modifications that I will discuss in a moment, can be an appropriate vehicle to achieve this goal. The modifications are important but are in large part less of a policy nature than of a purely legal or constitutional character.

I would wish to make it clear from the outset that my observations should in no way obscure the fact that the administration supports moving Puerto Rican status legislation forward.

The recent events in Eastern Europe remind us of the central importance, and the historical rarity, of political self-determination through democratic means. The belief that a people have the right to determine their own political fate through a free election, following free debate, has shown enormous power in Eastern Europe and has motivated great acts of courage by reformers in that part of the world. What has happened there has given hope that the ideals of freedom might sweep aside decades of repression. Yet recent events in that region also bring to mind that, in fact, relatively few peoples in history have been allowed to exercise a right of self-determination through democratic means and that that right, where it exists, must be vigilantly guarded.

In our hemisphere, I am reminded of the democratic tide that swept Violeta Chamorro into office in Nicaragua. Although the turn to democracy in Nicaragua was dramatic, we should not overlook that there have been numerous free elections in the region over the past several years, underscoring the significance of democratic principles throughout Latin America and the Caribbean. Most recently, Puerto Rico's Caribbean neighbor Haiti committed itself to the democratic process through free and fair elections which result in the inauguration of a new president today.

In this context it is fitting that the people of Puerto Rico should be afforded the opportunity to determine their future relationship with the United States through democratic means. By honoring this right in our own hemisphere, we can continue to serve as a model of liberty, inspiring others all over the globe.

Moreover, Congress should allow the people of Puerto Rico to determine their own political future because it is simply fair and right. The people of Puerto Rico know better than anyone else which political path offers the most hope for achieving the kind of society that the Puerto Rican people desire. It would be an affront to deny them the opportunity to choose that path or to force them to follow a path that others think best for them.

At present, Puerto Rico is a commonwealth under the sovereignty of the United States. It has been given the right to organize a government pursuant to a constitution of its own adoption. Puerto Rico boasts a rich cultural heritage hundreds of years old. The contributions of Puerto Ricans in industry, music, literature and the arts have enriched American culture and have made Puerto Rico one of the most prosperous areas in all of the Caribbean and Latin America.

The residents of Puerto Rico have enjoyed United States citizenship since 1917, and Puerto Rico's sons and daughters have contributed to American society in every walk of life. Puerto Ricans have served honorably in our armed forces in both world wars as well as the Korean and Vietnam conflicts. Many Puerto Ricans are currently serving as members of our courageous armed forces as part of Operation DESERT STORM in the Persian Gulf. We truly owe these Puerto Rican men and women a tremendous debt of gratitude, and our thoughts and prayers are with them today as they are with all of our armed forces in the Gulf.

Puerto Ricans have long cherished the ideals of democracy and individual liberty as articulated in the Declaration of Independence and our United States Constitution. They govern themselves through a freely elected commonwealth government and actively participate in United States presidential primaries and national party conventions. Not until 1967, however, have the people of Puerto Rico had the opportunity to vote on the form of their continuing relationship with the United States. Dramatic changes in the island's economic, political, and social environment have shaped the political climate during the ensuing 24 years.

The electorate of Puerto Rico has more than doubled since the last referendum. Over one-half of all voters today, all those under the age of 45, were too young to vote in 1967. The opportunity to vote upon their future is long overdue, and the administration believes that such an opportunity should be expeditiously provided.

The administration has in the past expressed its support for the enactment of either S. 712 or H.R. 4765, the status referendum legislation introduced during the previous Congress. This new bill combines the two approaches, with the result that S. 244 also presents some of the technical and legal difficulties of both of the earlier proposals. We believe, however, that these difficulties are not insurmountable. The administration is eager to move legislation forward, and we look forward to working together with the Congress to address the legal and technical difficulties we have identified. Those concerns are addressed in the separate section-by-section comments that we are submitting today for the use of the committee. We hope that by providing these detailed comments the Department of Justice can assist the committee in quickly working toward a bill that will legally and effectively accomplish the historic purposes for which we are here today.

I would like briefly to sketch, on only the most general level, the difficulties we see in the bill as currently drafted and to leave the details to the section-by-section comments and to my colleagues who will follow me. Once again, let me stress that the administration's goal is to assist in providing a fair and just vehicle through which the Puerto Rican people can express their will. My comments are intended to improve the bill and should not detract at all from the administration's strong support.

The concerns that we have identified in S. 244 fall into two broad categories. First, there are technical and legal problems created by the two-stage approach of a referendum followed by implementing legislation; in particular, the inclusion in the bill of detailed proposals for future, implementing legislation that Congress is not and cannot be legally obliged to enact. While this approach has the advantage of providing the electorate of Puerto Rico with a more precise picture of the likely consequences of whichever status option is selected, it is vitally important that it be made clear that the detailed descriptions of proposed implementing legislation set forth in titles II, III, and IV of the bill are not self-executing or legally binding on Congress. Rather, they constitute proposals for implementing legislation that may be changed in some important particulars and, we believe, in some respects must be changed in order to be consistent with the United States Constitution. It must therefore be made clear that all that would be formally enacted by the bill is title I, which provides for the referendum itself, and that title I does not incorporate by reference or commit Congress to adopt in its present form any of the subsequent titles of the bill.

The CHAIRMAN. If I may interrupt there, General, that is exactly our intent. As I reread the language where it says "enactment of this section constitutes a commitment by Congress to implement the status," we really mean a moral commitment, and perhaps we should make that language more precise. I think your comments are well taken.

Please excuse the interruption.

Attorney General THORNBURGH. I appreciate that, Mr. Chairman. It is well to lay that on the record, I think, lest there be any misunderstanding. I will be glad to offer our views as to how that might be made more explicit.

The second category of difficulty, Mr. Chairman, concerns the details of the specific substantive proposals themselves. While, as I have noted, these details would not themselves be enacted as law under the Puerto Rico Status Referendum Act, any description of options should be as fair and legally realistic as possible so as again not to mislead the electorate of Puerto Rico about the consequences that would attend each of the options. Certain provisions in titles II, III and, IV, for example, contain constitutional and other legal infirmities that in our view would preclude their adoption as implementing legislation. If the purpose of presenting a detailed draft bill is to provide the electorate of Puerto Rico with a reasonably clear picture of the likely shape of implementing legislation for whichever option is chosen by a majority in the referendum, we strongly recommend that these difficulties be addressed now in the immediate context of the pending bill. It would be a disservice to the people of Puerto Rico to postpone resolution of these issues until after a particular status option has been chosen in the plebiscite, expectations about that status option have been created, and Congress is considering actual implementing legislation.

The CHAIRMAN. If I may interrupt once more—and please excuse these interruptions—that is precisely my and Senator Wallop's view in introducing this legislation. The people of Puerto Rico ought to know what it is they are choosing, ought to know the precise nature of the choices. We will deal with your recommendations later, but that sums up as well as any of us could say exactly what we mean.

Attorney General THORNBURGH. Thank you, Mr. Chairman.

I would, however, like to highlight some aspects of the substantive proposals for statehood and commonwealth that we find troubling. More extensive discussion of these and other issues is included in our section-by-section comments.

Should the statehood option be chosen, we believe it is unnecessary and, indeed, inappropriate to delay the onset of statehood for 5 years following the adoption of implementing legislation. To do so would not achieve what we presume is the desired result; that is, to avoid constitutional concerns under the tax uniformity provisions of the Constitution, Article I, Section 8, Clause 1, which requires that all Duties, Imposts and Excises be uniform throughout the United States. The 5-year delay apparently would be aimed at permitting, before statehood, a transition from Puerto Rico's current, favored, tax status as an unincorporated territory to strict tax uniformity. This approach overlooks, I suggest, two crucial points.

First, it appears to assume that the Uniformity Clause would apply to Puerto Rico only after it actually became a State. This assumption, however, is incorrect. At present, Puerto Rico is exempt from the requirements of the Uniformity Clause only because it is an unincorporated territory; that is, a territory that has not been incorporated into the United States because it has not previously been anticipated that Puerto Rico would become a State.

Under the Supreme Court precedents, however, Puerto Rico would become an incorporated territory once it becomes destined for statehood. Puerto Rico, therefore, would become subject to the requirements of the uniformity clause as soon as Congress passes implementing legislation to make Puerto Rico a State. For purposes of applying the uniformity clause, therefore, it makes no difference whatsoever whether statehood becomes effective immediately or is delayed for 5 years.

This does not mean, however, that Puerto Rico's tax status must be changed immediately once the decision is made to bring Puerto Rico into the Union as a State.

That brings me to the second important point. Whether Puerto Rico becomes a State or an incorporated territory, the uniformity clause permits tax transition provisions, provided they are narrowly tailored, to prevent specific and identified problems of economic dislocation that Congress concludes would otherwise result from the transition from a non-incorporated territorial status to either an incorporated territorial or State status.

As Assistant Attorney General Shirley Peterson of the Tax Division testified before the Senate Finance Committee on November 14, 1989, we believe that a phase-in of permanent tax status would satisfy the requirements of the Uniformity Clause, if supported by adequate congressional findings that such a transitional period was necessary to take into account localized problems unique to Puerto Rico. For example, any economic dislocation that Puerto Rico might suffer if the tax benefits currently enjoyed there were suddenly and immediately terminated and if narrowly tailored to the goal of avoiding such severe dislocation.

Thus, we believe it is clear that the Constitution equally permits such a transition period before or after Puerto Rico becomes a State. This being so, we must oppose any unnecessary delay in the enjoyment of the benefits of statehood if that is the option selected by the Puerto Rican people. While the terms of each status option must be carefully scrutinized to ensure their conformity with the Constitution, whatever political status option is chosen by the people of Puerto Rico should not be delayed by unfounded constitutional concerns.

We also have concerns with some of the provisions that define the commonwealth option. For example, section 402(a) would declare that Puerto Rico "enjoys sovereignty like a State to the extent provided by the Tenth Amendment," and that "this relationship is permanent unless revoked by mutual consent." These declarations, I suggest, are totally inconsistent with the Constitution.

Under the Territory Clause of the Constitution, Article 4, Section 3, Clause 2, an area within the sovereignty of the United States that is not included in a State must necessarily be governed by or under the authority of Congress. Congress cannot escape this constitutional command by extending to Puerto Rico the provisions of the Tenth Amendment, which by its terms provides only the to the relationship between the Federal Government and the States.

We also doubt that Congress may effectively limit, by a statutory mutual consent requirement its constitutional power under the Territory Clause to alter Puerto Rico's status in some respect in the future. Not even the so-called "enhanced commonwealth" can ever hope to be outside of this constitutional provision.

Mr. Chairman, let me once again stress that this President wholly supports a referendum that allows the people of Puerto Rico to determine what their continuing relationship with the United States shall be. To this end, the administration stands willing to work with the committee to address the remaining issues. With these concerns addressed, we would hope that this legislation can be moved toward quick passage so that the people of Puerto Rico may make the historic decision about their political destiny that S. 244 would permit.

Mr. Chairman, I appreciate the opportunity to appear before you and your colleagues this morning. I appreciate your indulgence in my schedule, and I would propose to relinquish the Chair to Assistant Attorney General Gerson and our colleagues so that more detailed examination of some of the matters that I have adverted to in my prepared statement can be entered into.

Thank you.

[The prepared statement of Mr. Thornburgh follows:]

PREPARED STATEMENT OF HON. RICHARD THORNBURGH, ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee: I am pleased to be here today to testify on behalf of the Administration regarding S. 244, the "Puerto Rico Status Referendum Act." This important bill provides for a referendum to be held in Puerto Rico to allow residents of Puerto Rico to express their preference of political status from among the options of (i) Statehood; (ii) Independence; and (iii) continued Commonwealth status. Congress would then consider appropriate legislation to implement the status option chosen. This implementing legislation would take effect upon ratification by the people of Puerto Rico in a separate vote.

This President and his Administration strongly favor the right of the people of Puerto Rico to choose their political status by means of a referendum. The President has repeatedly declared that the people of Puerto Rico should have the right to determine their own political future. In his view, it is inconsistent for us to "applaud the exciting and momentous movements toward freedom in Eastern Europe, Latin America and elsewhere while refusing to grant to our own citizens the right to self-determination." The people of Puerto Rico should have the right to chart their own political future by engaging in the fundamental act of democracy, a free election. We believe that the approach of S. 244, with certain necessary modifications that I will discuss in a moment, can be an appropriate vehicle to achieve this goal. The modifications are important and are in large part less of a policy nature than of a purely legal or constitutional character. However, I wish to make it clear from the outset that my observations should in no way obscure the fact that the Administration supports moving Puerto Rican status legislation forward.

The recent events in Eastern Europe remind us of the central importance, and the historical rarity, of political self-determination through democratic means. The belief that a people has the right to determine its own political fate through a free election, following free debate, has shown enormous power in Eastern Europe and has motivated great acts of courage by reformers in that part of the world. What has happened there has given hope that ideals of freedom might sweep aside decades of repression. Yet recent events in that region also bring to mind that, in fact, relatively few peoples in history have been allowed to exercise a right of self-determination through democratic means, and that the right, where it exists, must be vigilantly guarded.

In our own hemisphere, I am reminded of the democratic tide that swept Violeta Chamorro into office in Nicaragua. Although the turn to democracy in Nicaragua was dramatic, we should not overlook that there have been numerous free elections in the region over the last several years that underscore the significance of democratic principles throughout Latin America and the Caribbean. Most recently, Puerto Rico's Caribbean neighbor Haiti committed itself to the democratic process through free and fair elections. In this context it is fitting that the people of Puerto Rico should be afforded the opportunity to determine their future relationship with the United States through democratic means. By honoring this right in our own hemisphere, we can continue to serve as a model of liberty inspiring others all over the globe.

Moreover, Congress should allow the people of Puerto Rico to determine their own political future because it is simply fair and right. The people of Puerto Rico know better than anyone else which political path offers the most hope for achieving the kind of society that the Puerto Rican people desire. It would be an affront to deny them the opportunity to choose that path or to force them to follow a path that others think best for them.

At present, Puerto Rico is a commonwealth under the sovereignty of the United States. It has been given the right to organize a government pursuant to a constitution of its own adoption. Puerto Rico boasts a rich cultural heritage hundreds of years old. The contributions of Puerto Ricans in industry, music, literature, and the arts have enriched American culture and have made Puerto Rico one of the most prosperous areas in all of the Caribbean and Latin America.

The residents of Puerto Rico have enjoyed United States citizenship since 1917, and Puerto Rico's sons and daughters have contributed to American society in every walk of life. Puerto Ricans have served honorably in our armed forces in both World Wars, as well as the Korean and Vietnam conflicts. Many Puerto Ricans are currently serving as members of our courageous armed forces as part of Operation Desert Storm in the Persian Gulf. We truly owe these Puerto Rican men and women a tremendous debt of gratitude, and our thoughts and prayers are with them today, as they are with all of our armed forces in the Gulf.

Puerto Ricans have long cherished the ideals of democracy and individual liberty as articulated in the Declaration of Independence and the United States Constitution. They govern themselves through a freely elected commonwealth government, and actively participate in United States presidential primaries and national party conventions. Not since 1967, however, have the people of Puerto Rico had the opportunity to vote on the form of their continuing relationship with the United States. Dramatic changes in the island's economic, political, and social environment have shaped the political climate during the ensuing twenty-four years. The electorate of Puerto Rico has more than doubled since this last referendum. Over one-half of all voters today—all those under the age of 45—were too young to vote in 1967. The opportunity to vote upon their future is long overdue and the Administration believes that such an opportunity should be expeditiously provided.

The Administration has in the past expressed its support for the enactment of either S. 712 or H.R. 4765, the status referendum legislation introduced during the previous Congress. This new bill combines the two approaches, with the result that S. 244 also presents some of the technical and legal difficulties of both of the earlier proposals. We believe, however, that these difficulties are not insurmountable. The Administration is eager to move legislation forward, and we look forward to working together with the Congress to address the legal and technical difficulties we have identified. Those concerns are addressed in the separate section-by-section comments that we are submitting today for the Committee. We hope that by providing these detailed comments, the Department of Justice can assist the Committee in quickly working toward a bill that will legally and effectively accomplish the historic purposes for which we are here today.

I would like briefly to sketch, on only the most general level, the difficulties we see in the bill as currently drafted, and to leave the details to the section-by-section comments. Once again, let me stress that the Administration's goal is to assist in providing a fair and just vehicle through which the Puerto Rican people can express their will. My comments are intended to improve the bill and should not detract at all from the Administration's strong support.

The concerns that we have identified in S. 244 fall into two broad categories. First, there are technical and legal problems created by the two-stage approach of a referendum followed by implementing legislation—in particular the inclusion in the bill of detailed proposals for future, implementing legislation that Congress is not and cannot be legally obliged to enact. While this approach has the advantage of providing the electorate of Puerto Rico with a more precise picture of the likely consequences of whichever status option is selected, it is vitally important that it be made clear that the detailed descriptions of proposed implementing legislation as set forth in titles II, III, and IV of the bill are self-executing or legally binding on Congress. Rather, they constitute proposals for implementing legislation that may be changed in some important particulars and, we believe, in some respects be changed in order to be consistent with the U.S. Constitution. It must therefore be made clear that all that would be formally enacted by the bill is Title I, which provides for the referendum itself, and that Title I does not incorporate by reference, or commit Congress to adopt in its present form, any of the subsequent titles of the bill.

The second category of difficulties concerns the details of the specific substantive proposals themselves. While, as I have noted, these details would not themselves be enacted as law under the Puerto Rico Status Referendum Act, any descriptions of options should be as fair and legally realistic as possible, so as not to mislead the electorate of Puerto Rico about the consequences that would attend each of the options. Certain provisions in titles II, III, and IV, for example, contain constitutional and other legal infirmities that, in our view, would preclude their adoption as implementing legislation. If the purpose of presenting a detailed draft bill is to provide the electorate of Puerto Rico with a reasonably clear picture of the likely shape of implementing legislation for whichever option is chosen by a majority in the referendum, we strongly recommend that these difficulties be addressed now in the immediate context of the pending bill. It would be a disservice to the people of Puerto Rico to postpone resolution of these issues until after a particular status option has been chosen in the plebiscite, expectations about that status option have been created, and Congress is considering actual implementing legislation.

I would, however, like to highlight some aspects of the substantive proposals for statehood and commonwealth that we find troubling. More extensive discussion of these and other issues is included in our section-by-section comments.

Should the statehood option be chosen, we believe it is unnecessary and indeed inappropriate to delay the onset of statehood for five years following the adoption of implementing legislation. To do so would not achieve what we presume is the desired result, that is, to avoid constitutional concerns under the tax uniformity provision of the Constitution, U.S. Const. Art. I, § 8, cl. 1, which requires that "all Duties, Imposts and Excises . . . be uniform throughout the United States." The five-year delay apparently would be aimed at permitting, before statehood, a transition from Puerto Rico's current, favored, tax status as an unincorporated territory to strict tax uniformity. This approach overlooks two crucial points.

First, it appears to assume that the Uniformity Clause would apply to Puerto Rico only after it actually became a state. This assumption, however, is incorrect. At present, Puerto Rico is exempt from the requirements of the Uniformity Clause only because it is an "unincorporated" territory; that is, a territory that has not been incorporated into "the United States" because it has not previously been anticipated that Puerto Rico would become a state. Under the Supreme Court's precedents, however, Puerto Rico would become an incorporated territory once it becomes destined for statehood. Puerto Rico therefore would become subject to the requirements of the Uniformity Clause as soon as Congress passes implementing legislation to make Puerto Rico a state. Therefore, for purposes of applying the Uniformity Clause, it makes no difference whatsoever whether statehood becomes effective immediately or is delayed for five years.

This does not mean, however, that Puerto Rico's tax status must be changed immediately once the decision is made to bring Puerto Rico into the union as a state. That brings me to the second important point: Whether Puerto Rico becomes a state or an incorporated territory, the Uniformity Clause permits tax transition provisions, provided they are narrowly tailored to prevent specific and identified problems of economic dislocation that Congress concludes would otherwise result from the transition from a non-incorporated territorial status to either an incorporated territorial or state status. As Assistant Attorney General Shirley Peterson of the Tax Division testified before the Senate Finance Committee on November 14, 1989, we believe that a phase-in of permanent tax status would satisfy the requirements of the Uniformity Clause, if supported by adequate Congressional findings that such a transitional period was necessary to take into account localized problems unique to Puerto Rico—for example, any economic dislocation that Puerto Rico might suffer if the tax benefits currently enjoyed there were suddenly and immediately terminated—and if narrowly tailored to the goal of avoiding such severe dislocation.

Thus, we believe it is clear that the Constitution equally permits such a transition period before or after Puerto Rico becomes a state. This being so, we must oppose any unnecessary delay in the enjoyment of the benefits of statehood if that is the option selected by the Puerto Rican people. While the terms of each status option must be carefully scrutinized to ensure their conformity with the Constitution, whatever political status option is chosen by the people of Puerto Rico should not be delayed by unfounded constitutional concerns.

We also have concerns with some of the provisions that define the commonwealth option. For example, section 402(a) would declare that Puerto Rico "enjoys sovereignty, like a state, to the extent provided by the Tenth Amendment," and that "[t]his relationship is permanent unless revoked by mutual consent." These declarations are totally inconsistent with the Constitution.

Under the Territory Clause of the Constitution, U.S. Const. Art. IV, § 3, cl. 2, an area within the sovereignty of the United States that is not included in a state must necessarily be governed by or under the authority of Congress. Congress cannot escape this Constitutional command by extending to Puerto Rico the provisions of the Tenth Amendment, which by its terms applies only to the relationship between the federal government and states. We also doubt that Congress may effectively limit, by a statutory mutual consent requirement, its constitutional power under the Territory Clause to alter Puerto Rico's commonwealth status in some respect in the future. Not even so-called "enhanced commonwealth" can ever hope to be outside this constitutional provision.

Mr. Chairman, let me once again stress that this President wholeheartedly supports a referendum that allows the people of Puerto Rico to determine what their continuing relationship with the United States shall be. To this end, the Administration stands willing to work with the Committee to address the remaining issues. With these concerns addressed, we would hope that this legislation can be moved toward quick passage, so that the people of Puerto Rico may make the historic decision about their political destiny that S. 244 would permit.

SECTION-BY-SECTION COMMENTS ON S. 244 *

These comments express the views of the Department of Justice with respect to S. 244, the "Puerto Rico Status Referendum Act." [1] The bill would provide for a status referendum to be held in December of 1991 in Puerto Rico to allow residents of Puerto Rico to express their preference of political status from among the options of (i) Statehood; (ii) Independence; and (iii) Commonwealth.

The approach of this bill differs from the approaches of status referendum legislation introduced during the previous Congress in the Senate ("S. 712") and in the House ("H.R. 4765"), but combines aspects of each. Under S. 244, legislation to alter the political status of Puerto Rico would proceed in two stages. First, a referendum would be held among the three political status options as described in titles II, III, and IV of the bill. Unlike the approach of S. 712, however, the selection of a particular status option in the referendum would not become self-executing. Rather, subsequent legislation would be required to implement whatever status option is selected by a majority in the referendum. The details of the particular status option as described in the applicable title of the Puerto Rico Status Referendum Act would not automatically be adopted by virtue of the referendum result; rather, that "title" would be in the nature of a legislative *proposal* to be introduced by the Chairman of the Senate Committee on Energy and Natural Resources and the Chairman of the House Committee on Interior and Insular Affairs as implementing legislation, which apparently can be modified or amended. The implementing legislation is to take effect following a second, ratifying vote of the electorate of Puerto Rico.

In providing for this two-stage process, S. 244 follows the approach of H.R. 4765 as reported by the House Committee on Interior and Insular Affairs in the 101st Congress. However, the draft bill provides considerably greater detail as to the type of implementing legislation envisioned by Congress for whatever status option is selected, and in this respect parallels the approach of S. 712 as reported by the Senate Committee on Energy and Natural Resources and the Senate Finance Committee in the 101st Congress.

The Department of Justice has in the past expressed its support for *either* the approach of S. 712 or the approach of H.R. 4765. In many respects, S. 244 combines the advantages of each approach. Of course, in combining the two approaches, the draft bill presents the technical and legal difficulties of both of the earlier proposals. We believe, however, that these difficulties should not be insurmountable.

The difficulties in S. 244 fall into two broad categories. First, there are certain technical and legal difficulties created by the two-stage approach, in particular the inclusion within legislation providing for the referendum detailed *proposals* for *future*, implementing legislation that Congress is not legally obliged to enact. While this approach has the advantage of providing the electorate of Puerto Rico with a more clear and detailed picture of the likely consequences of whichever status option is selected, we believe it is vitally important that it be made clear that the detailed descriptions of proposed implementing legislation as set forth in titles II, III, and IV of the bill, are *not* self-executing or in any way a legal commitment of Congress. Rather, they constitute *proposals* for implementing legislation that may be changed in some important particulars (and, we believe, in some respects *must* be changed in order to be consistent with the U.S. Constitution). It must therefore be made clear that all that would be formally *enacted* by the bill is Title I, which provides for the referendum itself, and that Title I does not incorporate by reference, or commit Congress to adopt in its present form, any of the subsequent titles of the bill.

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* This document has been cleared by the Office of Management and Budget.

[1] We understand that other agencies may have comments on particular aspects of this bill. Our comments are limited to constitutional and other legal issues and to policy issues within the jurisdiction of the Department of Justice.

The second category of difficulties concerns the details of the specific substantive proposals themselves. While, as noted, these details would not themselves be enacted as law under the draft Puerto Rico Status Referendum Act, we believe that it is important that any descriptions of the several status options be as fair and legally realistic as possible, so as not to mislead the electorate of Puerto Rico and create unrealistic expectations about the consequences that would attend each of the options. We have identified constitutional and other legal difficulties with certain of the provisions in each of titles II, III, and IV that we believe would preclude their adoption as implementing legislation. If the purpose of including such details in the draft bill—to provide the electorate of Puerto Rico with a reasonably clear picture of the likely shape of implementing for whichever option is chosen by a majority in the referendum—is to be achieved, we strongly believe that these difficulties must be addressed in the immediate context of the draft bill and not postponed until a particular title is introduced as actual implementing legislation.

These two major types of problems are interrelated and can tend to compound one another. For example, if it is *unclear* that titles II, III, and IV are merely proposals *and* the substance of those proposals is unrealistic or constitutionally improper, the greatest possibility for confusing or misleading the electorate of Puerto Rico would exist. Nonetheless, each type of problem is significant in its own right. It may be tempting to say that, so long as it is made clear that titles II, III, and IV are merely proposals for implementing legislation, the specifics of these proposals need not now be considered with care. On the other hand, it may be tempting to say that if the details of the substantive proposals are corrected to avoid constitutional difficulty, there is little danger in not clarifying that they are only proposals. We would strongly disagree with either suggestion. So long as the bill does not make the choice of a particular status option self-executing, it is misleading to suggest that Congress is "bound" in any legal sense to enact the title corresponding to that choice, even if the provisions of that title were made realistic and constitutional. Congress may not legally bind itself. Congress could always change the substance of proposed implementing legislation. If Congress intends to truly *commit* itself to implement whatever status option receives a majority in accordance with the details of whichever title is applicable, it should return to the self-executing approach and language of S. 712. Similarly, even if it is clear that titles II, III, and IV are mere proposals, it is misleading to include detailed proposals that have no realistic chance of being enacted into law or that are likely to be invalidated as unconstitutional. In such event, it would be better to return to the approach of H.R. 4765, in which the choice is purely one of political status, with the precise consequences and transitional arrangements attending each status outlined in only the most general terms in a committee report. The hybrid approach of S. 244 has many advantages, but it should address *both* types of problems.

The remainder of these comments addresses in detail particular legal difficulties in the bill, beginning with Title I and the problems associated with making clear the separate stages of the two-stage procedure envisioned by Title I, and continuing with the specific substantive proposals of titles II (statehood), III (independence), and IV (commonwealth).

PREAMBLE

Section (1) of the preamble preceding Title I of the draft bill provide that "the United States of America recognizes the principle of self-determination and other applicable principles of international law with respect to Puerto Rico." In view of the sovereignty of the United States over Puerto Rico, the clause "and other applicable principles of international law" should be omitted.

TITLE I—REFERENDUM

TITLE I—1. AMBIGUITIES IN THE TWO-STAGE PROCEDURE

Title I, section 101(a) provides for an island-wide referendum among three status options, which are to appear on the ballot as follows:

> "(1) Statehood as set forth in title II of the Puerto Rico Status Referendum Act;
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> (2) Independence as set forth in title III of the Puerto Rico Status Referendum Act; and
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> (3) Commonwealth as set forth in title IV of the Puerto Rico Status Referendum Act."

Section 101(e)(1) provides that if the referendum results in a majority for one of the three status options, the Chairman of the Senate Committee on Energy and Natural Resources and the Chairman of the House Committee on Interior and Insular Affairs "shall introduce the appropriate title of this Act" corresponding to the choice receiving a majority, in order "to implement the status selected by the People of Puerto Rico, pursuant to this Act[.]" Section 101(e)(2) provides that "[e]nactment of this section constitutes a commitment by Congress to implement the status receiving a majority."

We believe that these provisions would benefit from clarification. Taken together, the provisions may create the misleading impression that Congress has "commit[ed]" itself, § 101(e)(2) to "implement the status selected by the People of Puerto Rico," § 101(e)(1), "*as set forth*" in the appropriate title corresponding to that status option. Section 101(a) (emphasis added). This impression is further supported by the structure of the bill, which includes the proposals for implementing legislation as actual "titles" of the Puerto Rico Status Referendum Act, suggesting that they are in some sense enacted into law. Moreover, language within each of these subsequent titles references section 101(f) in terms of specifying when the terms of such provisions shall take effect.

Nonetheless, we believe that the bill as presently drafted must be understood as providing that the implementation of whatever status option is selected by a majority in the referendum would not be self-executing, nor impose upon Congress a legal or even moral obligation to enact that status option without any change. Section 101(e)(1) provides only that the chairmen of the respective Senate and House committees shall "introduce" the appropriate title and section 101(f) states that the implementation legislation is to take effect only following a ratification vote by the electorate of Puerto Rico. In order to avoid the confusion created by the draft's present language, however, we believe the following changes are necessary.

First, to make clear that titles II, III, and IV are not enacted as part of the Puerto Rico Status Referendum Act but are merely proposals for implementing legislation, section 101(a) (1), (2) and (3) should be changed to provide that the options shall appear on the ballot as simply "Statehood," "Independence," and "Commonwealth" and that the words "as set forth in title" should be deleted.

Second, we believe that section 101(f), concerning ratification of implementing legislation by a second plebiscite, should be deleted or modified. If implementing legislation is to be separately enacted, the event or events that will trigger the operation of its provisions should be specified in the implementing legislation, not in the original act providing for the holding of the referendum. Each status option should be self-contained and provide its own requirement of a ratification vote and state the steps by which it will go into effect after its enactment and approval by the people of Puerto Rico.

We therefore recommend that a section providing for ratification by the electorate of Puerto Rico be added to each separate title and that references to section 101(f) in each title be changed to refer instead to that new section. We note that the implementation of the prevailing option would be dated from the ratification vote. In view of the possibility that this schedule could be upset by challenges to that vote, we recommend that the implementation of the prevailing option should be dated from a Presidential proclamation certifying the outcome of the ratification vote, rather from the date of the election. We therefore recommend that the following section be incorporated in each of the titles containing the status options:

Section ——

(a) After enactment, this Act shall be submitted to the people of Puerto Rico for approval in a ratification vote.

(b) If this Act is approved by a majority of the valid votes cast, the President of the United States shall proclaim the result of the ratification vote, and the remainder of this Act shall thereupon take effect according to its terms.

TITLE I—2. DATE OF REFERENDUM AND RUNOFF

Title I, section 101(b) provides that the first referendum shall occur on December 2, 1991 "or on a date during the autumn of calendar year 1991 as may be mutually agreed by the three principal political parties of Puerto Rico." This provision unconstitutionally vests federal authority in persons other than officers of the United States appointed pursuant to the Appointments Clause of the Constitution. U.S. Const. Art. II, § 2, cl. 2. The change of the referendum date from the date stated in an Act of Congress would constitute the exercise of "significant authority pursuant to the laws of the United States" or the "performance of a significant governmental duty exercised pursuant to a public law." *Buckley* v. *Valeo,* 424 U.S. 1, 126, 141 (1976). Such authority can be exercised and such duty can be performed only by an officer of the United States appointed pursuant to the Appointments Clause, *Id.* at 126, 141, not by local political parties. We recommend that this function be vested in the President alone. We would have no objection, however, to a provision that permitted the three principal political parties to recommend to the President an alternative referendum date.

The balance of section 101(b) provides that if there is no majority in favor of one of the three options, "there shall be, within thirty days, a runoff referendum between the two status options which had received the largest number of votes. Such referendum shall also include an option of 'Neither of the Above.' " The draft bill is silent as to how or by whom the precise date of the runoff referendum is set. We again recommend that this function be vested in the President alone, but would have no objection to a provision that permitted recommendations by Puerto Rico's principal political parties, though we question the need for or desirability of including the eliminated party in any such process.

It should be specified that the term "majority" means a majority of the votes cast, and not a mere plurality. It is not clear whether the "Neither of the Above" option applies only to the run-off referendum or also to the original referendum. The bill is also silent as to the effect of the failure of any status option to obtain a majority in the runoff election. We recommend that the bill provide in so many words that, if no majority is obtained by any status option, there will be no change in the status of Puerto Rico.

TITLE I—3. JUDICIAL REVIEW

Title I, section 101(d) would establish a three-judge court to resolve disputes arising out of the referendum. We do not oppose this mechanism as a means of dispute resolution, but suggest that it be made clear that this is to be an extraordinary court of limited jurisdiction. In this regard, we believe that section 101(d)(2)(A) should be amended to read: "Any claims *regarding this Act* brought under the United States Constitution or a Federal statute . . .".

Title I, section 101(d)(1)(A) provides that "[a]ny aggrieved person (including, without limitation, and [sic] political party[)]" may institute an action to challenge the outcome of the referendum certified by the governor, on the ground that significant electoral irregularities occurred that affected the outcome of the referendum. We understand this provision as intended to accord standing to litigate to the full extent permitted by Article III of the Constitution. We believe this purpose is fully accomplished by providing that "any aggrieved person" may institute such an action. We recommend that the parenthetical phrase "(including, without limitation, an[y] political party[)]" should be deleted as raising an unnecessary and difficult legal question concerning whether political parties may possess Article III standing to litigate such questions. The provision could be amended to permit such parties to participate as *amicus curiae* in any litigation instituted by an "aggrieved" person having Article III standing.

Title I, section 101(d)(2)(B) also contains a minor technical error in providing for appellate review of judgments of the special three-judge court. The last sentence of this provision states that "[a]n appeal from a final judgment of the three-judge court will lie to the Supreme Court of the United States by way of certiorari." Technically, review by appeal is review as of right, while review by certiorari is review at the discretion of the Supreme Court. The two procedures are different. It is unclear which procedure is intended by section 101(d)(2)(B). The provision should be amended to use appropriate language specifying which procedure is to be used for obtaining Supreme Court review.

The term "local law" as used in section 101(d)(1)(E) is unclear. *See infra* at 14. This provision should be construed as inviting the three-judge court to accord due deference to precedents of Puerto Rico courts, but would not preclude independent determination by the court of all questions of law.

TITLE II—STATEHOOD

TITLE II—1. DELAY OF ONSET OF STATEHOOD FOR FIVE YEARS

Title II, section 201(a) provides for the President to issue a proclamation announcing ratification of statehood if such a result occurs in a ratification election. Section 201(b) provides that upon the issuance of that proclamation, Puerto Rico shall be declared a State of the United States of America effective on January 1 of the fifth calendar year following the calendar year in which the ratification occurs. In accordance with the discussion above, *supra* at 4-6, we believe that section 201 should be modified along the lines proposed in our comments on section 101(f).

We question the need for deferring the admission of Puerto Rico as a state for five years. The primary purpose of this provision appears to be to provide a five-year transition period during which the application of the Internal Revenue Code would be phased in and the benefits of section 936 would be phased out. The apparent purpose of this proposal is to avoid the constitutional concerns that the tax transition provisions create under the Uniformity Clause of the Constitution. U.S. Const. Art. I, § 8, cl. 1 ("The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."). We understand that Congress would have good reason to want to avoid subjecting Puerto Rico to the sudden withdrawal of its current beneficial tax status. However, we believe that Congress may provide for a period of tax transition without delaying the onset of statehood.

The Uniformity Clause issues presented by the tax transition provisions (discussed in the immediately following section) arise in the same manner whether the transition occurs before or after the formal proclamation of statehood, once Puerto Rico has been destined to become a state by virtue of the proclamation of the result of the ratification vote. As we shall demonstrate, the requirement of the Uniformity Clause that duties, imposts, and excises be uniform throughout the United States is totally unaffected by delaying the onset of statehood, but hinges on whether or not an area under the sovereignty of the United States has been "incorporated" into the United States. Incorporation occurs as soon as it is decided that the area will become a state; it is not deferred until actual statehood. The question therefore is whether uniformity must be achieved at the moment of incorporation or whether it is permissible to provide for a transitional period to minimize the economic dislocation that may arise from the sudden imposition of the system of taxation governing throughout the United States. We shall discuss, first, the non-applicability of the Uniformity Clause to unincorporated territories; second, the definition of an unincorporated territory and transition to an incorporated territory; and finally, in the next section, the constitutionality of transitional provisions for unincorporated territories upon incorporation.

The Supreme Court has held that the requirement of the Uniformity Clause that duties, imposts, and excises be uniform throughout the United States applies only to areas that have been "incorporated" into the United States. An "unincorporated" territory, *i.e.*, a United States territory or possession that it is not anticipated eventually to become a state, is deemed not part of "the United States" within the meaning of the Uniformity Clause and is thus not subject to the clause; an "incorporated" territory forms part of the United States and is subject to the requirements of the clause.

The leading case for the incorporated territory/unincorporated territory distinction is *Downes* v. *Bidwell,* 182 U.S. 244 (1901). In *Downes,* the Court held that nonuniform customs treatment for Puerto Rico did not violate the requirements of the Uniformity Clause because Puerto Rico had not been incorporated as part of the United States. The concurring opinion of Justice White has come to be accepted as the controlling rationale of the case. *See Torres* v. *Puerto Rico,* 442 U.S. 465, 468-69 (1979); *Examining Board* v. *Flores de Otero, 426 U.S. 572, 599-600 n.30 (1976); Granville-Smith* v. *Granville-Smith,* 349 U.S. 1, 5 (1955); *Balzac* v. *Porto Rico,* 258 U.S. 298, 311-313 (1922). Justice White's opinion reasons as follows:

> In the case of the territories, as in every other instance, when a provision of the Constitution is invoked, the question which arises is not whether the Constitution is operative, for that is self-evident, but whether the provision relied on is applicable.
>
> . . . As Congress derives its authority to levy local taxes for local purposes within the territories, not from the general grant of power to tax as expressed in the Constitution, it follows that its right to locally tax is not to be measured by the provision empowering Congress "To lay and collect

> Taxes, Duties, Imposts and Excises," and is not restrained by the requirement of uniformity throughout the United States. But the power, just referred to, as well as the qualification of uniformity, restrains Congress from imposing an impost duty on goods coming into the United States from a territory which has been incorporated into and forms a part of the United States.

Downes, 182 U.S. at 292 (White, J., concurring).

For purposes of the applicability of the Uniformity Clause, the question then becomes whether a territory has been "incorporated" into the United States. Though the exact parameters of this incorporation doctrine have been the subject of continuous debate in Supreme Court opinions, it is clear that at least one dispositive factor in determining that a territory has been "incorporated" is that it is anticipated or intended that the territory will eventually become a state. *United States* v. *Verdugo-Urguidez,* 110 S. Ct. 1056, 1062 (1990) (unincorporated territory is "one not clearly destined for statehood") *Examining Board* v. *Flores de Otero,* 426 U.S. 572, 599 n.30 (1976) (incorporated territories are "those Territories destined for statehood from the time of acquisition" and unincorporated territories are "those Territories not possessing that anticipation of statehood."); *Granville-Smith* v. *Granville-Smith,* 349 U.S. 1, 5 (1955) ("A vital distinction was made between 'incorporated' and 'unincorporated' territories. The first category had the potentialities of statehood like unto continental territories. The second category described possessions of the United States not thought of as future States."). *See also Downes,* 182 U.S. at 293-294 (White, J., concurring)

Other cases discuss the question of "incorporation" in terms of whether Congress's *intention* to make a territory an incorporated territory. *Cf Balzac* v. *Porto Rico, 258 U.S. 298, 311-313 (1922); but see Rassmussen* v. *United States,* 197 U.S. 516, 523-25 (1905) (looking to objective criteria as indicia of intention to incorporate a territory). But while explicit statements of intention "to incorporate" or not to incorporate may be relevant where a territory is not anticipated to become a state, it is clear that where eventual statehood is contemplated, the relevant intention is not any expression of intention "to incorporate" or not to incorporate, but the intention that the territory be made a state.

Under the reasoning of the Supreme Court's precedents, we believe that Puerto Rico would be effectively "incorporated" as part of the United States for purposes of application of the Uniformity Clause either (i) at the time a referendum majority for statehood is certified, given the bill's stated proposal to implement the status option selected by the people of Puerto Rico, or, certainly, (ii) by the time legislation putting into implementation the statehood choice is ratified or otherwise becomes operative. At whichever of these points a court would conclude Puerto Rico has become destined for statehood," *Verdugo-Urguidez,* 110 S. Ct. at 1062; *Flores de Otero,* 426 U.S. at 599 n.30, Puerto Rico will have become "incorporated" into the United States for purposes of Uniformity Clause analysis. Thus, the Uniformity Clause issues presented by the transitional tax provisions of the draft bill are not in any meaningful way affected by delaying the onset of statehood, once it is decided that Puerto Rico shall become a state. In our view, then, the delay of the onset of statehood is in no way justified by Uniformity Clause concerns.

TITLE II—2. PHASE-OUT OF SECTION 936 BENEFITS; PHASE-IN OF TAX LIABILITY GENERALLY

Title II, section 214 provides for numerous transition provisions concerning federal taxation and revenue transfers, including transitional provisions for phasing-out the current tax preference for Puerto Rico contained in section 936 of the Internal Revenue Code. *See* § 214(d). As noted in Assistant Attorney General Peterson's testimony before the Senate Finance Committee on November 14, 1989 on S. 712 in the 101st Congress, we believe that the retention and phase-out of the section 936 preference as a transitional measure could satisfy the requirements of the Uniformity Clause, if supported by adequate Congressional findings that such a transitional period was necessary to take into account localized problems unique to Puerto Rico—particularly, the economic dislocation that would result to an already economically depressed state from a sudden and immediate termination of the section 936 benefits—and if narrowly tailored to the goal of avoiding such severe dislocation. There is no evidence that the Uniformity Clause was intended to so constrain the exercise of Congress' power under Article IV to admit new states to the Union as to disable Congress from fashioning reasonable and necessary transition measures. Assistant Attorney General Peterson emphasized that such a provision "must represent a direct, tailored response to a geographically isolated problem: namely, the economic dislocation that would otherwise occur upon Puerto Rico's admission to the Union."

We again emphasize the necessity for Congress to make detailed additional findings supporting its determination as to any transitional tax measure it adopts. This analysis applies with equal, if not increased, force to the proposed phase-in of tax liability generally, such as is provided by section 214(a). Such a phase-in of the federal income tax would have much broader application than a phase-out of benefits under section 936. As we have indicated previously, in our letter of July 18, 1990 to Chairman Bentsen of the Committee on Finance with respect to S. 712, the greater the number and value of tax transition benefits provided to Puerto Rico under the statehood option, and the longer the transition period, the more difficult will be the task of making findings that would support a conclusion that the measures are narrowly tailored to addressing a unique, geographically isolated problem and do not constitute an "undue preference" for Puerto Rico in violation of the Uniformity Clause.

At present, section 213 contains only the general statement that "the provisions of section 214 are enacted pursuant to Congress's power to admit new States, in recognition of the unique Federal tax provisions and programs affecting the Commonwealth of Puerto Rico which differ from those which applied to any other newly admitted State, and solely for the purposes of effecting a smooth and fair transition for the new State with a minimum of economic dislocation and to permit Federal agencies to assume or expand responsibilities for the administration and enforcement of Federal taxes and programs affecting the citizens residing in the new State." § 213. While we believe this statement appropriately summarizes the features underlying a legitimate, nondiscriminatory purpose for the various transitional tax provisions contained in section 214, *see United States* v. *Ptasynski, 462 U.S. 74, 84-86 (1983); cf.* Regional Rail Reorganization Act Cases, 419 U.S. 102, 159-161 (1974), it is in our view critical that the overall *effect* of the transitional provisions also be narrowly-tailored to these constitutionally legitimate objectives in order to satisfy the "close examination" the Supreme Court requires of geographical distinctions in taxation. *See Ptasynski,* 462 U.S. at 75-80, 85 (emphasizing congressional findings concerning unique geographical circumstances justifying geographical tax classification).

We believe that implementing legislation can be fashioned that provides for a constitutionally sound transition in tax status; that is, one that is narrowly tailored to prevent economic dislocation resulting from the change in tax status from arrangements appropriate to an unincorporated territory to permanent arrangements appropriate to an incorporated territory or a state of the union. Moreover, we support the concept of a five-year tax transition as a constitutionally permissible period of time for which such a transition to take place, either before or after Puerto Rico becomes a state.

TITLE II—3. CONSTITUTION

Title II, section 202, states that the Constitution adopted by the people of Puerto Rico on June 4, 1951, was accepted, ratified, and confirmed through Public Law 447 of the 82nd Congress, March 3, 1952, and that the Constitution of Puerto Rico as ratified by the people of Puerto Rico in the referendum held on June 4, 1951 is hereby accepted as the Constitution of the State. This provision contains several technical errors which need to be corrected. First, Public Law 447 was approved by Congress in July (not March) 1952. Second, Public Law 447 did not unconditionally accept, ratify, and confirm the June 4, 1951 Constitution but mandated several amendments that became effective on January 29, 1953. Third, since then, there has been at least one constitutional amendment to the Constitution of Puerto Rico. To "accept" the current Constitution of Puerto Rico as ratified by the June 4, 1951 referendum would ignore the subsequent amendments to the Constitution, including those mandated by Congress in 1952. In any event, the current Constitution of Puerto Rico is not identical with the one ratified in the 1951 plebiscite. As drafted, section 202 could be understood to nullify the amendments to the 1951 Constitution.

We therefore recommend that this section be reworded as follows:

> Section 202. The Constitution of the Commonwealth of Puerto Rico shall always be republican in form and shall conform to the Constitution of the United States and the principles of the Declaration of Independence. The Constitution of the Commonwealth of Puerto Rico in effect on January 1, 1991, is hereby found by Congress to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted as the Constitution of the State.

TITLE II—4. ELECTIONS AND ADMISSION REFERENDUM

We suggest the following technical corrections for Title II, section 206. First, section 206(a)(1)(A) should be modified to delete the reference to section 101(f) of the Puerto Rico Status Referendum Act and to set a triggering date keyed to the date of passage of the implementing legislation. If Congress chooses not to delay the onset of statehood, *see* discussion *supra* at ——, we recommend that the first line be modified to read: "Not later than January 1st of the *first* calendar year . . .".

Second, on the fifth line of section 206(a)(1)(A), between the words "election" and "of," insert: "of officers of all State election offices provided for in the Constitution of the proposed State of Puerto Rico and". The purpose of this insertion is to provide for the election of the officers referred to in the second sentence of paragraph (b)(3). *Compare* Section 6 of the Hawaii Statehood Act. 48 U.S.C. Chapter 3, note.

Third, in the last sentence of this subparagraph insert between "Tuesday" and "in" the words "after the first Monday" to adjust this sentence to the time for general elections provided for under federal as well as Puerto Rican law. 2 U.S.C. § 7; 16 L.P.R.A. § 3.

Fourth, the first sentence of section 206(a)(1)(B) appears to duplicate the first sentence of subsection (b)(1). We recommend that the content of subsection (b)(1) be substituted for the first sentence of section 206(a)(1)(b). Subsection (b)(1) could then be deleted.

Fifth, section 206(b)(3) could be read as providing that the officers of the Commonwealth holding office on the effective day of the Act would be frozen in their offices until statehood, even if their statutory terms expired sooner. We recommend that this provision be clarified.

TITLE II—5. LAWS IN EFFECT

Title II, section 208(a) deals with the topic of "Laws in Effect." The subsection provides generally that, upon admission, all of the "local laws" in force in Puerto Rico shall continue in force and that "the laws of the United States" shall have the same force and effect within Puerto Rico as prior to admission. The section does not define the term "local laws" and "laws of the United States," leaving it open to question whether laws enacted by Congress with respect to Puerto Rico under the Territorial Clause of the Constitution are considered local laws or laws of the United States. Section 15 of the Hawaiian Statehood Act obviates this ambiguity by defining the terms "Territorial [Local] laws" and "laws of the United States." We therefore recommend the inclusion in Section 208(a) of a definition, similar to Section 15 of the Hawaiian Statehood Act, Pub. L. No. 86-3, 73 Stat. 4, 11 (1959), as follows:

> As used in this subsection, the term 'local laws' includes (in addition to the laws enacted by the legislature of Puerto Rico) all laws or parts thereof enacted by Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Puerto Rico prior to its admission into the Union, and the term 'laws of the United States' includes all laws or parts thereof enacted by the Congress that (1) apply to or within Puerto Rico at the time of its admission into the Union, (2) are not "local laws" as defined in this subsection, and (3) are not in conflict with other provisions of this Title [Act].

TITLE II—6. COMMISSION ON FEDERAL LAWS

Title II, section 208(b) provides for the appointment by the President of a Commission on Federal Laws to survey the laws of the United States and to make recommendations to Congress as to which laws should be made applicable or inapplicable to Puerto Rico after becoming a state.[2] The Commission is to consist of seven persons, at least four of whom are to be residents of Puerto Rico who are or have been domiciled in Puerto Rico continuously for five years.

Because the Commission appears to be given no executive duties, but is charged solely with making legislative recommendations to Congress (a duty Congress constitutionally may not impose on executive branch agencies),[3] in the absence of clarifying language we would construe this provision as creating a legislative branch commission. We note that Congress has provided for certain legislative officers to be appointed by the President. *See Bowsher* v. *Synar,* 478 U.S. 714, 727-28 (1986) (Comptroller General appointed by President with advice and consent of Senate).

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[2] The opening clause of this subsection should be modified along the lines proposed in our comments on Title I, section 101(f).

[3] The Constitution explicitly vests in the President the discretion to decide whether and when executive branch officials should propose legislation. Article II, section 3 provides that the President "shall from time to time . . . recommend to [Congress'] Consideration such Measures *as he shall be necessary and expedient.*" U.S. Const. Art. II, § 3 (emphasis added). Accordingly, executive branch bodies may not be required to submit legislative recommendations.

TITLE II—7. CONTINUATION OF SUITS AND APPEALS

Title II, sections 209 and 210, contain provisions relating to the continuation of suits and appeals. They apparently have been copied from other admission acts in which those provisions were necessary because the admission of those States resulted in changes in the jurisdiction of courts. Such change would not occur in connection with the admission of Puerto Rico as a State, because the United States District Court for the District of Puerto Rico already has the jurisdiction of a District Court of the United States. Admission therefore will not bring about any change in the jurisdiction of the federal courts and the courts of Puerto Rico. We therefore recommend that section 210 be eliminated and that section 209 be modified to read as follows:

> No writ, action, indictment, cause, or proceeding of a civil, criminal, appellate or other nature pending in any court of the Commonwealth of Puerto Rico, or in any court of the United States shall abate by reason of the admission of the Commonwealth of Puerto Rico into the Union, but shall continue in the court in which it shall be pending at the date of such admission.

TITLE III—INDEPENDENCE

TITLE III—1. ELECTORATE FOR THE PUERTO RICAN CONSTITUTIONAL CONVENTION [4]

Title III, section 301(b) of the bill would establish qualifications for voting in the election of delegates to the constitutional convention. It would in substance deny the vote to those residents of Puerto Rico who were not born in Puerto Rico or who do not have at least one parent or a spouse born in Puerto Rico, unless they have resided in Puerto Rico for a period of twenty years at the time of the adoption of the Act.

We believe that these provisions are unconstitutional. As long as Puerto Rico is under the sovereignty of the United States, it is bound by the equal protection principles embodied in the Due Process Clause of the Fifth Amendment and the Equal Protection Clause of the Fourteenth Amendment. *Rodriguez* v. *Popular Democratic Party,* 457 U.S. 1, 7-8 (1982). Voting qualifications based on place of birth, parentage, or an excessively long residence requirement would plainly violate equal protection requirements. *See id.* at 10 ("[W]hen a state or the Commonwealth of Puerto Rico has provided that its representatives be elected, 'a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.' *Dunn* v. *Blumstein,* 405 U.S. 330, 336 (1972).").

The fact that the election is to take place after Puerto Rico has opted for independence does not change this analysis. So long as the election takes place before Puerto Rico is actually declared an independent, sovereign nation, the Constitution of the United States continues to apply, and requires that all United States citizens in the jurisdiction have the same right to participate in the election of delegates to the constitutional convention as do other citizens of the United States within the jurisdiction.

For the same reason, we object to section 303(d), which would limit the right to vote on the Constitution adopted by the convention to those who were entitled to vote for delegates to the Constitutional Convention.

TITLE III—2. CHARACTER OF THE CONSTITUTION

Title III, section 302(b) would require an independent Puerto Rico to guarantee as fundamental rights both political rights and economic and social rights. The latter are not guaranteed in the U.S. Constitution, and in our view, it would be unreasonable to demand that Puerto Rico, with its limited resources, guarantee rights not guaranteed by our Constitution. We suggest deleting the words, "and economic, social and cultural rights such as the right to education, adequate nutrition, health services, adequate housing, and work or employment."

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[4] In accordance with the discussion above, *supra* at 4-6, we believe that section 201(a) should be modified along the lines proposed in our comments on section 101(f) of Title I.

TITLE III—3. JOINT TRANSITION COMMISSION

Title III, section 305 provides for the appointment of a Joint Transition Commission. The Joint Transition Commission must be appointed in equal numbers by the President and by the presiding officer of the Constitutional Convention of Puerto Rico. The Commission would have responsibility for "expediting the orderly transfer of all functions currently exercised by the Government of the United States," to an independent Puerto Rico, "including the recommendation of appropriate legislation to the appropriate officials of each government." Further, the Commission would be required to establish several "task forces" which would be responsible for negotiating various agreements between the United States and Puerto Rico. *See* §§ 312, 313, 314, 315, and 317.

Section 305 is silent as to the time when the appointment of the Joint Transition Commission would take place. To avoid ambiguity and resulting confusion, the section should specify the time of the appointment of the Commission.

We do not oppose the Commission in principle. However, several points with respect to the Commission, and to the Task Forces appointed by the Commission, must be clarified to avoid constitutional problems. First, it must be made clear that *only* those members duly appointed by the President may represent the United States in the negotiation of agreements with Puerto Rico, and that those members remain subject to the President's direction and control as officers of the United States. Second, it must also be made clear that only the members of the Commission representing the United States may appoint the representatives of the United States on each of the various task forces to be appointed by the Commission, and that the U.S. representatives on the task forces likewise remain subject to the President's direction and control as officers of the United States. Third, it must be made clear that the Commission itself, comprising members appointed by the President and members selected by the Presiding Officer of the Constitutional Convention of Puerto Rico (who are not officers of the United States because not appointed pursuant to the requirements of the Appointments Clause, U.S. Const. Art. II, § 2, cl. 4), may exercise no governmental power on behalf of the United States, *Buckley* v. *Valeo*, 424 U.S. 1, 126-141 (1976), but may merely make recommendations and provide advice to the legislative and executive branches. At present, section 305(b)'s language providing that the Commission "shall be responsible for expediting the orderly transfer of all functions currently exercised by the Government of the United States in Puerto Rico, or in relation to Puerto Rico," could be construed to improperly grant the Commission actual executive authority. This language should be modified accordingly. Finally, each provision of the bill which provides for the negotiation of an agreement must contain the language that appears in Title III, section 312 (regarding defense agreements): "and approved in accordance with the constitutional processes of the United States."

TITLE III—4. DISPUTE RESOLUTION AFTER CERTIFICATION OF THE REFERENDUM

We object to Title III, section 306, which would stay actions arising under this title filed after the election is certified, and refer any such disputes to the Joint Transition Commission for resolution. Given that the United States still retains sovereignty over Puerto Rico and its residents until the proclamation of independence, resolution of disputes leading up to independence must remain in the federal courts. It would violate Article III of the Constitution to vest final power to adjudicate claims arising under the laws of the United States in the Joint Transition Commission.

TITLE III—5. EFFECTS OF PROCLAMATION OF INDEPENDENCE ON LEGAL AND CONSTITUTIONAL PROVISIONS

Title III, section 307(a) would make independence of Puerto Rico contingent on the prior conclusion of the agreements dealing with defense and federal programs provided for in sections 312 and 313. It is our view that the list of those treaties should not be limited to the areas of defense and federal programs, but that it should include recognition of judgments, extradition, law enforcement assistance, federal auditing of funds provided for by the United States, and such additional topics as other agencies might consider necessary. The independence of Puerto Rico should be made contingent on the prior conclusion of those treaties.

This subsection also would provide that:

> The President of the United States shall by proclamation *withdraw* and surrender all rights of possession, supervision, jurisdiction, control or *sovereignty* then existing and exercised by the United States over the territory and people

> of Puerto Rico, and shall furthermore *recognize* on behalf of the United States of America the *independence* of the Republic of Puerto Rico and the authority of the government instituted by the people of Puerto Rico under the Constitution of their own adoption. The proclamation shall state the effective date of *withdrawal of the sovereignty* of the United States and the *recognition of independence* shall be the same as the date of the proclamation of independence, as provided in subsection (d).

Section 307(a) (emphasis added).

It is not clear whether the deferment of the effective date of the Presidential proclamation to the date of independence is limited to the withdrawal of sovereignty and recognition of independence, or whether it applies to all aspects of the proclamation. We believe that the latter reading is preferable and consider it advisable that this point be clarified. Moreover, it will be noted that the proposed proclamation would provide for the withdrawal in surrender of "*all* rights of possession, supervision, jurisdiction, [and] control over the territory . . . of Puerto Rico." This is inconsistent with the need for the United States to retain continued use and unrestricted access to military and Coast Guard installations and facilities.[5] Finally, the phrase "*recognize* on behalf of the United States of America" could be taken as suggesting an interference with the President's prerogatives in the area of foreign relations with the newly independent nation of Puerto Rico, *see infra* at 26-30, rather than as merely carrying into execution the grant of independence to what is presently a United States territory subject to Congress' legislative power under the Territory Clause.

We therefore recommend that Section 307(b) be redrafted as follows:

> Sec. 307(b). When the President of the United States is satisfied that the agreements set forth in Sections 112 through —— have been concluded and approved pursuant to the constitutional processes of the United States of America and Puerto Rico and that they will be binding on the Republic of Puerto Rico after its independence, but not sooner than one month after the official certification of the elected officers of the Republic of Puerto Rico under Section 304, the President of the United States shall proclaim on behalf of the United States the independence of the Republic of Puerto Rico and the authority of the government instituted by the People of Puerto Rico under the Constitution of their own adoption. The effective date of that proclamation shall be the same as the date of the proclamation of independence provided for in subsection (d).

Title III, section 308(a) (2) and (3) provides that upon independence all laws of the United States applicable to Puerto Rico shall cease to apply to Puerto Rico, and that all laws and regulations of the Commonwealth shall continue in force until replaced with new legislation.[6] It is not clear what is meant by "the laws of the United States applicable to Puerto Rico." This provision could refer to all laws enacted by Congress, or only to those laws the validity of which does not depend solely upon the authority of Congress to provide for the Government of Puerto Rico. We recommend that this provision be clarified.

TITLE III—6. JUDICIAL PRONOUNCEMENTS

Title III, section 309 provides that, "[u]nless otherwise agreed by the Governments of United States and Puerto Rico in accordance with their respective constitutional processes[,]" certain provisions shall take effect concerning the effect of U.S. court proceedings and judgments in cases that were initiated prior to independence taking effect but that are in some sense not completed at the time of independence. For several reasons, we believe that this section should be amended to provide simply that the United States and Puerto Rico should enter into agreements addressing the issues that are the subject of section 309.

Section 309(3) presents difficult constitutional issues under Article III of the Constitution. It is unclear whether, in many cases, the federal courts of the United States would continue to have jurisdiction over cases that no longer arise under federal law once Puerto Rico ceases to have the status of a United States territory. It is also unclear whether federal courts constitutionally may render judgments that cannot be executed by the authority of the United States government, unless a valid treaty or executive agreement so provides. We believe that these very difficult issues should be addressed as part of a negotiated agreement or treaty with respect to judgments of the courts of the respective sovereigns, and cannot effectively be accomplished by statute. Because of the importance of the issues involved, we believe that an agreement on these points, like agreements in other areas, should be a condition precedent to independence. *See* discussion *infra* at 21-22.

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[5] It should be noted that section 10(a) of the Philippine Independence Act of 1934, Pub. L. No. 127, § 10(a), 48 Stat. 456, 463 (1934), on which section 307(a) of this bill apparently was modeled, in part, expressly excepted from the withdrawal and surrender the military facilities reserved to the United States under that legislation.

[6] We recommend that section 308 omit "(a)" because there is no subsection (b).

TITLE III—7. REQUIRED AGREEMENTS

Title III contains a number of provisions requiring that agreements be negotiated before Puerto Rico is declared independent. For example, section 312 provides for the negotiation of certain defense agreements; sections 313 and 314 provide for the negotiation of agreements relating to the continuation of various federal programs and the Social Security System in Puerto Rico after independence; section 317 provides for the negotiation of an agreement relating to the establishment of a Puerto Rican deposit insurance system.

As noted above, it is our view that independence should be conditional not only on the conclusion of the Defense and Federal Programs Agreements, but also on agreements concerning the effect of judgments of U.S. courts in cases involving Puerto Rico, on agreements providing for extradition and law enforcement assistance, especially in the field of narcotics, and of other agreements considered crucial by other agencies, in particular, the conclusion of an agreement providing for the auditing by U.S. officials of the use of all funds provided by the Government of the United States to the Republic of Puerto Rico. The several agreements negotiated pursuant to this Title should also provide that, in the event an agreement is unilaterally terminated by Puerto Rico, the United States has the power to suspend or withhold in whole or in part the payment of any of its obligations or grants to the Republic of Puerto Rico.

We believe that the agreements called for under Title III may be negotiated before Puerto Rico is declared independent, and concluded in such a way as to bind Puerto Rico upon its becoming an independent nation. The ability of an inchoate government to bind the government for the period after it gains full independence was recognized in connection with the evolution of the Freely Associated States (Federated States of Micronesia and the Republic of the Marshall Islands). *See Juda* v. *United States,* 13 Cl. Ct. 667 (1987), *aff'd sub. nom. People of Enewetak* v. *United States,* 864 F.2d 134 (Fed. Cir. 1988), *cert. denied,* 109 S. Ct. 3198 (1989); *Antolok* v. *United States,* 873 F.2d 369 (D.C. Cir. 1989). We believe that such an arrangement could be placed on even firmer ground by requiring as a condition for the grant of independence that Puerto Rico's constitution contain a provision that would accept as binding international agreements under the constitution and laws of the newly independent Commonwealth of Puerto Rico the agreements entered into between the United States and Puerto Rico, as negotiated by the various task forces established by the Joint Transition Commission and approved according to the constitutional processes of the United States.

The "constitutional processes" of the United States should also be clarified in this regard. Agreements made with Puerto Rico prior to its becoming independent would not clearly have the status of "treaties," as they would not be made with a foreign nation. The approval of 2/3 of the Senate would not, in our view, be the appropriate constitutional process for approval of such agreements. Rather, the agreements partake of the nature both of conditions attached by Congress to the grant of independence, under Congress' ordinary legislative powers under Article IV, § 3, cl. 2 (prior to the grant of independence), and of the President's power to conduct foreign relations (after the grant of independence). To avoid confusion over the source of power to conclude these agreements and their subsequent status as legally valid international agreements, Congress should make an explicit delegation to the President of its authority under the territorial power of Article IV, section 3, clause 2 of the Constitution, to conclude agreements containing certain specified terms. In such event, the President's power to conclude those agreements would flow not only from his foreign relations power but also from the territorial authority of Congress, and the resulting agreement would, upon the proclamation of independence by the President, have the familiar status of an "executive agreement," which has the same force of law as a treaty. We understand this to be the approach intended by the present bill. We recommend that these provisions be amended explicitly to reflect such an intention.

TITLE III—8. STATE SUCCESSION

Title III, section 310(b) provides that "[u]pon proclamation of independence the President of the United States shall notify the governments with which the United

States is in diplomatic correspondence . . ." of the recognition of independence and the consequences of such recognition on those nations' relations with Puerto Rico. As discussed more fully below, *see infra* at 26-28, the conduct of United States foreign policy is a presidential prerogative that cannot be controlled by statute. We recommend that section 310 be recast as a "sense of the Congress" statement.

TITLE III—9. CITIZENSHIP

Title III, section 311 provides that persons born in Puerto Rico after the effective date of the Act shall not become citizens of the United States, and that Puerto Ricans who are citizens of the United States cannot transmit their United States citizenship to their children, born outside the United States. The section fails to address two important issues.

First, this section is silent as to whether citizens of a newly independent Puerto Rico eventually would be required to give up their United States citizenship. This could create the impression that independence would not have any effect on the continued United States citizenship of the residents or citizens of Puerto Rico. Most of the citizens thus would have dual, i.e. United States and Puerto Rican citizenship, at least for one generation.[7] We object to this aspect of the bill.

While Congress has the power to allow such an arrangement, we strongly oppose allowing dual citizenship for the entire Puerto Rican population. Allowing approximately 3.4 million Puerto Ricans to maintain a dual citizenship differs fundamentally from the isolated cases of individual dual citizenship that the United States currently tolerates. Overall, we seriously doubt whether the creation of an independent nation-state whose population consists almost entirely of United States citizens is in the interests of the United States. Such an arrangement potentially could lead to significant United States intervention in Puerto Rican affairs in the exercise of the President's responsibility to protect the safety, rights, and welfare of U.S. citizens abroad.

Moreover, as then Acting Deputy Attorney General Edward S.G. Dennis stated in his July 11, 1989, testimony before the Senate Energy and Natural Resources Committee on S. 712, we believe that each status option offered must be both clear and realistic. *Political Status of Puerto Rico: Hearings on S. 712 Before the Senate Comm. on Energy and Natural Resources,* 101st Cong., 1st Sess. 13, 16-17 (1989). Independence for Puerto Rico must mean real independence, which must include a loss of United States citizenship for residents of Puerto Rico. Therefore, we believe that if the independence option is chosen, the residents of Puerto Rico should be required to elect between retaining United States citizenship (ultimately taking up residence within the United States to perfect their status), and citizenship in the new republic.

Requiring the Puerto Rican population to elect between allegiances would be consistent with the rule of international law that the transfer of sovereignty of a territory transfers the allegiance of those who remain in the territory from the former sovereign to the new sovereign. *American Insurance Company* v. *Canter, 26 U.S. (1 Pet.) 511, 542 (1828); United States ex rel. Schwarzkopf* v. *Uhl,* 137 F.2d 898, 902 (2d Cir. 1943) and the authorities there cited; O'Connell, *The Law of State Succession* 246 (1956).[8]

We recognize that the well established international rule that a change in sovereignty works a change in citizenship must still be tested against the municipal law of the United States, especially the first sentence of the Fourteenth Amendment to the Constitution which provides (emphasis added):

> All persons born or naturalized *in the United States,* and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

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[7] Section 301(b) which would prevent the future devolution of United States citizenship on the descendants of citizens of Puerto Rico would not solve this problem. As long as citizens of Puerto Rico remain citizens of the United States, they can freely enter the United States, in particular the nearby Virgin Islands, to have their children born there. Those children would be citizens of the United States and perpetuate dual citizenship of Puerto Ricans.

[8] Within the framework of this general rule, specific treaties affecting the transfer of territory do frequently permit that the transfer of nationality ought to take place only with the consent, express or implied, of the persons affected. Hence, such agreements frequently give the inhabitants of the territory an option under which they can retain their former nationality, but usually at the "heavy" price of leaving the territory. Those who remain behind as a rule acquire the new nationality and lose their original one. Whiteman, 2 *Digest of International Law 934-935* (1963).

We do not believe, however, that as an original matter the first sentence of the Fourteenth Amendment was intended to protect citizenship which is lost by virtue of a rule of international law recognized at the time of the Amendment's adoption.

Moreover, because Puerto Rico has never been "incorporated" into the United States,[9] individuals born in Puerto Rico are United States citizens by statute, and not pursuant to the constitutional definition of citizenship in the Fourteenth Amendment. The citizenship of native Puerto Ricans is based on the Jones Act of March 2, 1917, which conferred United States citizenship on persons born in Puerto Rico. Codified at 8 U.S.C. § 1402.

The Supreme Court has held that Congress may deprive individuals of statutory citizenship under certain circumstances. *See Rogers* v. *Bellei*, 401 U.S. 815 (1971) (individual born abroad and entitled to United States citizenship by statute may lose citizenship by failing to comply with statutory residency requirements).[10] We believe that, under the Court's analysis in *Bellei*, a requirement that residents of a newly independent Puerto Rico elect between citizenship in the new nation, and retaining their United States citizenship (by residing in the United States for a number of years, for example) would pass constitutional muster.

Second, the question of Puerto Rican citizenship is one of great importance and should be the subject of an agreement required as a condition of independence. Previous proposals have suggested that Puerto Rican citizenship extend only to persons born in Puerto Rico, or whose parents or spouse were born in Puerto Rico. All other persons would acquire Puerto Rican citizenship only as provided by the Constitution and laws of the Republic of Puerto Rico. Section 301(b)'s proposed restrictions on the franchise suggest that Puerto Rican citizenship might be limited to those persons born in Puerto Rico and those who have resided there for a period of twenty years or more. It is our view that Puerto Rico citizenship should be made available to all citizens of the United States who are bona fide residents of Puerto Rico at the time of independence.

Under section 311(a), the new republic of Puerto Rico would be able to restrict citizenship as in the original bill, rendering deportable United States citizens living in Puerto Rico (perhaps for a considerable number of years) who were not born on the island, or who are not married to someone born on the island. We believe that provision should be made to protect the rights of United States citizens who wish to continue to reside in Puerto Rico after independence to acquire Puerto Rican citizenship. Thus, there should be a corresponding provision in section 311(a) to the effect that citizens of the United States who moved from the mainland to Puerto Rico should not lose their Puerto Rican citizenship as the result of independence.

TITLE III—10. TERMINATION OF AGREEMENT INVOLVING MILITARY COOPERATION AND DEFENSE

Title III, section 312, provides that the United States and Puerto Rico must reach certain binding agreements relating to military cooperation and defense, which shall come into effect simultaneously with the proclamation of independence, before independence may be proclaimed. Section 312 states certain specific matters that must be included in these agreements. Section 312 further provides that "any alteration, modification, amendment, limitation, termination, or other change in such agreement . . . shall occur only pursuant to a specific Act of Congress." We believe section 312 unconstitutionally intrudes on the authority of the President to conduct foreign affairs, which includes the authority to terminate, suspend, or limit the application of treaties and executive agreements with foreign nations.

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[9] Puerto Rico was not "incorporated" within the United States upon its acquisition from Spain, *see Downes* v. *Bidwell*, 182 U.S. 244 (1901), and Congress has never purported to effect such an incorporation. For the same reasons that Puerto Rico is currently not considered to be incorporated within the meaning of the phrase "the United States" for purposes of application of the Uniformity Clause of the Constitution, *see* discussion *supra* at 8-10, Puerto Rico is not incorporated within the meaning of "the United States" for purposes of the citizenship provisions of the Fourteenth Amendment. *Cf. Downes* v. *Bidwell*, 182 U.S. at 313 (Opinion of White, J.) (noting serious problems that would arise if, upon the acquisition of foreign territory, all the inhabitants thereof would automatically and as a matter of right become citizens of the United States).

[10] We recognize that in *Afroyim* v. *Rusk*, 387 U.S. 253, 260 (1967), the Supreme Court held that a citizen of the United States has a constitutional right to remain a citizen unless he voluntarily relinquishes his citizenship. The *Bellei* court, however, held that the statement in *Afroyim* that United States citizenship cannot be lost unless voluntarily relinquished, was limited to citizenship acquired pursuant to the Fourteenth Amendment, *i.e.*, by birth or naturalization in the United States, and therefore did not apply to *Bellei*, who had acquired his United States citizenship by statute, having been born to a U.S. citizen outside the United States. See *Bellei*, 401 U.S. at 815.

It is axiomatic that under our Constitution the President has been given broad authority over the conduct of the Nation's foreign relations. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-22 (1936); *see United States* v. *Pink, 315 U.S. 203 (1942); United States* v. *Belmont,* 301 U.S. 324 (1937); *cf. Dames & Moore* v. *Regan,* 453 U.S. 654 (1981). In the leading case of *United States* v. *Curtiss-Wright Export Corp., supra,* the Supreme Court described this power as "the very delicate, plenary and *exclusive* power of the President as the *sole organ* of the federal government in the field of international relations," 299 U.S. at 320 (emphasis added), a power which "does not require as a basis for its exercise an act of Congress." *Id.* at 320.[11] While this power is subject to the specific limitations set forth in other provisions of the Constitution, *id.* at 320, such as Congress' power to declare war and the Senate's advice and consent role with respect to the making of treaties and the appointment of ambassadors, U.S. Const. Art. II, § 2, cl. 2, these provisions "which blend action by the legislative branch, or by part of it, in the work of the executive, are limitations to be strictly construed and not to be extended by implication. . . ." *Myers* v. *United States,* 272 U.S. 52, 164 (1926). *See also Jefferson's Opinion on the Powers of the Senate Respecting Diplomatic Appointments,* April 24, 1790, in 16 *The Pacers of Thomas Jefferson* 378, 379 (J. Boyd ed. 1961) ("The transaction of business with foreign nations is Executive altogether. It belongs then to the head of that department, *except* as to such portions of it as are specially submitted to the Senate. *Exceptions* are to be construed strictly.") (emphasis in original).

Thus, while the Senate shares in the power to appoint ambassadors, it does not share in the President's power to remove them. *Myers* v. *United States,* 272 U.S. 52 (1926). Similarly, we believe that the role granted the Senate in the treaty-making process by Article II, section 2, clause 2, cannot be construed to imply a similar role in the termination of treaties or executive agreements. That power, we believe, belongs to the President alone.

This position is supported by the only recent judicial case on the issue, and by the views of constitutional scholars from Alexander Hamilton to the present. In *Goldwater* v. *Carter,* 617 F.2d 697 (D.C. Cir.) (*en banc*), *vacated and remanded with directions to dismiss the complaint,* 444 U.S. 996 (1979) (per curiam) the full *en banc* Court of Appeals for the District of Columbia Circuit held that the President's plenary authority in the field of foreign relations includes the power to terminate treaties, and thus rejected a challenge brought by members of Congress to President Carter's termination of a mutual defense treaty with the Republic of China (Taiwan). 617 F.2d at 703-709. The Supreme Court did not reverse this holding, but, acting on the petition for certiorari and without full briefing and argument, vacated the appellate court judgment and directed that the complaint challenging President Carter's action be dismissed. No opinion commanded a majority of the Court. Four justices thought that President Carter's action was not subject to judicial review because it involved "the authority of the President in the conduct of our country's foreign relations and the extent to which the Senate or the Congress is authorized to negate the action of the President," 444 U.S. at 1002, and was thus a nonjusticiable "political question." Justice Brennan would have affirmed the judgment of the Court of Appeals on the merits. Justice Brennan concluded that the President's power to terminate a defense treaty flows from the President's power to recognize and withdraw recognition from foreign governments. *Id.* at 1006-07 (Brennan, J., dissenting). Justice Powell concluded that the issue was not "ripe" for judicial review. *Id.* at 997-1002 (Powell, J., concurring in the judgment). And two justices voted to grant certiorari and would have scheduled the case for plenary consideration. *Id.* at 1006 (Blackmun, J., dissenting). While the import of the Supreme Court's action is subject to varying interpretations, *none* of the Justices suggested that the Constitution supplied a legal principle for invalidating the President's termination of the treaty in question. The Court of Appeals' opinion thus remains the most authoritative judicial pronouncement on the respective powers of the President and Congress in this area.

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[11] As the U.S. Court of Appeals for the District of Columbia has recognized, the President's status as the nation's sole organ in the field of international relations "is not confined to the service of the President as a channel of communication . . . but embraces an active policy determination as to the conduct of the United States. . . ." *Goldwater* v. *Carter,* 617 F.2d 697, 707 (D.C. Cir.) (*en banc*), *vacated other grounds,* 444 U.S. 996 (1979). *Accord* L. Tribe, *American Constitutional Law* § 4-4, at 219 (2d ed. 1988); L. Henkin, *Foreign Affairs and the Constitution* 47 (1972). We discuss the *Goldwater* v. *Carter* case at length presently.

Moreover, the Court of Appeals' conclusion in *Goldwater* v. *Carter* is consistent with the overwhelming weight of constitutional scholarship on the subject. *See* 15 The Papers of Alexander Hamilton 33, 42 (H. Syrett ed. 1969) (first "Pacificus" essay) (while "treaties can only be made by the President and Senate, their activity may be continued or suspended by the President alone."); L. Henkin, *Foreign Affairs and the Constitution* 136 (1972) (Senate lacks "any authoritative voice in interpreting a treaty or in terminating it"); L. Tribe, *American Constitutional Law* 220 (2d ed. 1988) (President has "exclusive responsibility . . . for negotiating, administering, and terminating treaties or executive agreements.").

Accordingly, we conclude that section 312(b), providing that any limitation or termination of agreements between the United States and an independent Commonwealth of Puerto Rico involving defense shall occur only pursuant to an Act of Congress, is unconstitutional. While Congress has broad power to legislate with respect to United States Territories under Article IV, section 3, clause 2, Congress may not use this authority in such a way as to assume powers that the Constitution has distributed in other ways. Section 312(b) improperly attempts to project Congress' authority to legislate with respect to the territories into the future, *after* Puerto Rico has ceased to have territorial status, in order to control in certain respects the future foreign relations between the United States and the independent nation of Puerto Rico. Congress may not employ the territorial power in such a manner as to violate other provisions of the Constitution, including the President's power over foreign affairs. *Cf. United States* v. *Louisiana*, 363 U.S. 1, 35 (1960) ("The power to admit new States resides in Congress. The President, on the other hand, is the constitutional representative of the United States in its dealings with foreign nations."). *See also Coyle* v. *Smith*, 221 U.S. 559, 568, 573 (1911).

TITLE III—11. FEDERAL PROGRAMS

Title III, section 313(b) (2) and (3) provides that the Comptroller General shall determine the total amount of grants, programs, and services provided by the federal government in Puerto Rico for the fiscal year in which independence is proclaimed, and that a grant equal to the amount determined by the Comptroller General shall be paid annually to the Republic of Puerto Rico for each of the nine following fiscal years.

We believe that this procedure is unconstitutional under *Bowsher* v. *Synar*, 478 U.S. 714 (1986). In *Bowsher*, the Supreme Court held unconstitutional the provisions of the Gramm-Rudman-Hollings Act that provided for the Comptroller General, an officer of the legislative branch, to make calculations of revenues and expenditures which had the ultimate effect of determining what budget cuts the President was then required to implement. The Court held that such a function was an exercise of executive power which could not be vested in an officer of the legislative branch, not subject to the President's direction or control. 478 U.S. at 721-33. The function of the Comptroller General under Title III, section 313 (b) (2) is constitutionally indistinguishable from that held invalid in *Bowsher*. The Comptroller General would be making a calculation concerning government grants, which calculation the executive would then be required by statute to implement. This provision should be modified to vest the contemplated calculations in an executive branch officer, such as the Director of the Office of Management and Budget.

TITLE III—12. TRADE RELATIONS

Title III, section 315 (e) and (f) authorizes the President to enter into trade agreements with Puerto Rico. These subsections specify in certain respects the content of agreements made under these subsections and special congressional procedures for implementing legislation. As noted above, the President has the authority under the Constitution to determine the form and manner in which the United States will maintain relations with foreign nations. *See Haig* v. *Agee*, 453 U.S. 280, 291 (1981); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936). *See also supra* at 26-28. This includes the authority to negotiate agreements with foreign powers for objectives that the President deems desirable. While Congress possesses legislative power with respect to commerce with foreign nations, Art. I, § 8, cl. 3, that power may not be employed in such a manner as to interfere with the President's power to conduct foreign relations or to negotiate treaties or executive agreements. Section 315(e)(1) readily may be clarified to avoid any constitutional difficulty in this regard. We recommend that the words "under this section" be inserted between the word "agreement" and the word "with" in line four of section 315(e)(1) in order to clarify that the content specifications and procedures for special legislative consideration are applicable only to agreements entered into pursuant to the particular authorization of that section, and do not limit or preclude the entering into agreements (including agreements on the same subject matter) through other constitutionally appropriate means.

TITLE IV—COMMONWEALTH

TITLE IV—1. PRINCIPLES OF COMMONWEALTH [12]

Title IV, section 402(a) provides:

> The Commonwealth of Puerto Rico is a unique juridical status, created as a compact between the People of Puerto Rico and the United States, under which Puerto Rico enjoys sovereignty, like a State, to the extent provided by the Tenth Amendment of the United States Constitution and in addition with autonomy consistent with its character, culture, and location. This relationship is permanent unless revoked by mutual consent.

This subsection is quite problematic and in our view presents an unrealistic view of what the commonwealth political relationship constitutionally means. We consider it imperative that it be made clear beyond peradventure that the Commonwealth is and must remain under the sovereignty of the United States. This is necessary in order to avoid the continuation of the uncertainties and controversies that have plagued the existing commonwealth relationship.

According to this subsection, Puerto Rico would possess "sovereignty, like a State, to the extent provided by the Tenth Amendment to the United States Constitution." This clause would purport to confer on Puerto Rico a status not permitted by the Constitution. Under the Constitution, an area under the sovereignty of the United States that is not included in a State "must necessarily be governed by or under the authority of Congress," *National Bank* v. *County of Yankton,* 101 U.S. 129, 133 (1880), *i.e.,* pursuant to the Territory Clause of the Constitution. U.S. Const. Art. IV, § 3, cl. 2. The Supreme Court held as recently as 1980 in *Harris* v. *Rosario,* 446 U.S. 651 (1980) (*per curiam*), that Puerto Rico is subject to the Territory Clause. Congress cannot escape this constitutional command by extending to Puerto Rico the provisions of the Tenth Amendment which, according to its own terms, apply only to the relationship between the federal government and *states.* To the extent this section purports to describe "autonomy" "in addition" to that of the states, it is even more clear that the relationship described is not constitutionally consistent with the idea of a commonwealth status.

We likewise have reservations about the last sentence of this subsection, which would provide that the commonwealth relationship between the United States and the Commonwealth "is permanent unless revoked by mutual consent." This clause may improperly attempt to impose a *statutory* limitation on Congress' power under the Territory Clause of the Constitution (Art. IV, § 3, cl. 2) to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." While there are statutory precedents for attempting to make such limitations in certain restricted circumstances—commitments which this Administration believes must be honored—it remains subject to serious legal question whether one Congress may create a statutory limitation on Congress' power to legislate in the future with respect to the status of what remains, for constitutional purposes, a territory subject to Congress' authority under the Territory Clause.

As a practical matter, it is unlikely in the extreme that Congress would legislate a major change in the political status of Puerto Rico—such as a grant of independence or of statehood—without the consent of the people of Puerto Rico. Section 402(a) could be read, however, as purporting to limit Congress' power to adjust the political status relationship between the United States and Puerto Rico in other respects, such as changing Puerto Rico's status from that of an unincorporated territory to that of an incorporated territory, though still under the label of "commonwealth" status. In any event, we believe that the fundamental constitutional principle of congressional authority under the Territory Clause to make certain changes in the political relationship of a territory to the United States must be maintained, and that the language of section 402(a) may create confusion in that regard.

The broad assertion that Congress may by "compact" eviscerate a future Congress's constitutional powers over a territory by giving the residents of that territory "vested rights" in a political status raises the question of whether Congress has the power to vest any such rights other than through a grant of independence or admission into the union as a state. Residents of a territory can acquire no "vested rights" in a political status the creation of which is, inconsistent with a provision of the Constitution (the Territory Clause). This contrasts with the situation where persons may acquire vested economic rights or interests by virtue of arrangements that are undoubtedly within Congress' constitutional power to adopt. *See, e.g., Lynch* v. *United States, 292 U.S. 571 (1934); Perry* v. *United States,* 294 U.S. 330 (1935). *Cf. Bowen* v. *Public Agencies Opposed to Social Security Entrapment,* 477 U.S. 41, 52 (1986) (Congress may create such an obligation only if it has done so in "unmistakable terms."); *Merrion* v. *Jicarilla Apache Tribe,* 455 U.S. 130, 148 (1982) (same). In such cases, the creation of a "vested interest" is not inconsistent with the exercise in the future of a power, but merely obliges the government to act in accordance with the constitutional limitation that *private* property not be taken for public use "without just compensation." U.S. Const. Amend. V.[13]

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[12] As noted earlier, we believe that section 401 should be modified along the lines proposed in our comments on section 101(f) of Title I.

We recognize that in the past the Department of Justice has taken the position that Congress can agree not to exercise its legislative authority in a limited number of narrowly defined areas. The instances in which the legislative authority in fact has been exercised in such a manner do not include a situation such as is proposed here, where a mutual consent requirement is proposed to be attached to the status relation. To the extent the Department's earlier opinions could be construed as endorsing such an application of Congress' power under the Territory Clause, we believe they are subject to serious question.

Section 402(b) would provide that:

> The policy of the United States shall be to enhance the Commonwealth relationship enjoyed by the Commonwealth of Puerto Rico and the United States to enable the people of Puerto Rico to accelerate their economic and social development, to attain maximum cultural autonomy, to seek fair treatment in Federal programs, and in matters of government to take into account local conditions in Puerto Rico.

We question the wisdom of including in legislation statements as vague as the ones included in this subsection, even if they are styled as "policy" and considered as only hortatory in nature. Moreover, section 404 requires federal agencies to apply this vague policy statement in its administration of federal laws and programs and provides for judicial review of agency determinations as to how this policy affects the applicability of certain administrative regulations. Section 402 is therefore highly likely to give rise to serious controversies and litigation.

Section 402(c) provides that "[t]he United States citizenship of persons born in Puerto Rico shall continue to be guaranteed and indefeasible to the same extent as that of citizens born in the several States." This statement is very seriously misleading. It is inaccurate as a description of the present citizenship status of residents of Puerto Rico. Moreover, it is highly questionable as a legal matter whether Congress *could* by statute bestow a citizenship status that is "indefeasible to the same extent as that of citizens born in the several States."

Unlike residents of the several states, whose United States citizenship is based on section one of the Fourteenth Amendment of the Constitution, the United States citizenship of residents of Puerto Rico is granted by federal statute, the Jones Act of March 2, 1917 (codified at 8 U.S.C. § 1402), and, in theory, could be revoked or modified by a subsequent statute. It is therefore inaccurate to describe the citizenship status of residents of Puerto Rico as "guaranteed and indefeasible to the same extent as that of citizens born in the several states."

While it is true that the *quality* of the statutory U.S. citizenship held by persons born in Puerto Rico is equal to that of the constitutional citizenship of persons born in the several states, in the sense that the rights appertaining specifically to citizenship are the same whether citizenship flows directly from the Constitution or instead from a federal statute,[14] the proposed language misleadingly suggests that the two types of citizenship have (or would have in the future) equivalent constitutional status. The citizenship of persons born in the several states is *constitutionally* guaranteed by section one of the Fourteenth Amendment. The citizenship of persons born in Puerto Rico is (and, under the Commonwealth option, would remain) "guaranteed" and "secured" by *statute*. In the former case, a constitutional amendment would be required to modify the status of one's citizenship acquired by virtue of the Fourteenth Amendment. In the latter case, citizenship status could be modified or revoked by statute. No provision of law bestows a constitutional *status* on the U.S. citizenship held by persons born in Puerto Rico.

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[13] Nor in our view may such an arrangement constitutionally be justified as the granting of a "measure of independence" or a partial relinquishing of United States sovereignty. Either the United States retains sovereignty over a territory or it does not. While the United States theoretically could grant independence to a territory and simultaneously enter into a treaty or executive agreement with that nation establishing a new political relationship, such an arrangement would require special constitutional procedures. We do not understand this to be what is intended by the Commonwealth proposal.

[14] Of course, the fact that the *citizenship* of persons born in Puerto Rico is equal in quality to that of citizens of the several states does not mean that Puerto Rican citizens have, in all respects, the same political and civil *rights* as citizens of the several states. For example, only by becoming residents of a state would U.S. citizens born in Puerto Rico acquire the right to vote in national elections and to voting representation in Congress. Moreover, not all of the provisions of the Constitution apply to Puerto Rico at present, because of its status as an unincorporated territory.

Of course, as a practical matter, the fact that the United States citizenship of persons born in Puerto Rico is based on a statute, rather than the Constitution, is probably not of much consequence. It seems highly unlikely that Congress would enact a statute that would revoke or modify the United States citizenship status of residents of Puerto Rico other than in the event Puerto Rico were to become an independent nation.

The statutory United States citizenship of residents of Puerto Rico can be placed on the same constitutional footing as the United States citizenship of residents of the several states only by making Puerto Rico a state (or perhaps an incorporated territory) thereby bringing the citizenship of Puerto Ricans within the terms of the first section of the Fourteenth Amendment. Thus, the proposed language is confusing and potentially misleading on this point.

TITLE IV—2. REGULATORY REVIEW

Title IV, section 404(c) provides that when an agency publishes a final rule that applies to the Commonwealth of Puerto Rico, the Governor of the Commonwealth may submit to the agency within a prescribed time period the Governor's determination that such rule is inconsistent with the policy of promoting maximum cultural autonomy for Puerto Rico, set forth in section 402. Thereupon, the agency is directed to reconsider the question of the consistency of its rule with the policy set forth in section 402(b) and make further findings accordingly. The power granted the Governor under this provision to delay and force reconsideration of the implementation of executive agency regulations is significant governmental authority under the laws of the United States. Such authority may be vested only in an officer of the United States, appointed pursuant to the requirements of the Appointments Clause of the Constitution. *Buckley* v. *Valeo,* 424 U.S. 1, 126-141 (1976). We therefore object to any provision permitting the Governor of Puerto Rico to intervene in the administration of federal regulations because the Governor is not appointed pursuant to the procedures of the Appointments Clause, but instead is elected by the people of Puerto Rico.

We believe the purposes of permitting participation by the Governor are readily accomplished in a constitutionally unobjectionable manner, simply by the usual requirements of a period of notice and comment before a published rule takes effect. The Governor (and any other interested person) could submit his views that such rule is inconsistent with the policy of section 402 and the agency could take those views into account in deciding whether to allow the rule to take effect or to revoke it.

We also have doubts whether it is appropriate to permit the Governor of the Commonwealth to petition for judicial review of an agency finding. It is not clear that the Governor in his official capacity suffers a cognizable personal injury from any such agency finding sufficient to confer Article III standing to challenge the agency action in federal court. We believe that the purposes of this section are best served, without constitutional difficulty, simply by permitting any aggrieved person who incurs injury as a consequence of the agency's determination to challenge that action in federal court.

The provision is also unclear in its reference to rules or regulations that "by [their] terms" apply in the Commonwealth of Puerto Rico. It is not clear whether this phrase includes all rules and regulations that are interpreted as applicable to the Commonwealth, or only those which explicitly and directly mention their applicability to Puerto Rico in the text of such rule or regulation. The provision is also unclear as to what procedure, if any, applies to regulations that apply to Puerto Rico but do not "by [their] terms" apply to Puerto Rico. Finally, the provision is unclear in its reference to "any final rule" "*other* than a rule issued after notice and hearing required by statute." Section 404(c) (emphasis added). It is unclear precisely to what categories of administrative rulemaking this section applies. We recommend that this language be clarified.

TITLE IV—3. APPOINTMENTS OF FEDERAL OFFICIALS

Title IV, section 408, would require the President, and the heads of departments or agencies making federal appointments, to consult with the Governor of Puerto Rico, or other appropriate Puerto Rican official, "as to whether there are any special circumstances or qualifications which should be considered in deciding on a nomination." We object to a requirement that the President "consult" with Puerto Rican officials before making appointments of principal officers. The Appointments Clause of the Constitution, U.S. Const. Art. II, § 2, cl. 2, does not permit Congress to fetter the President's power to appoint principal officers with a requirement that the appointment come from persons on a particular list or be made in consultation with some particular person or group, thereby allowing non-federal officers to share in the appointment power. **See generally Public Citizen** v. *United States Department of Justice,* 109 S. Ct. 2558, 2580-84 (1989) (Kennedy, J., concurring in the judgment); *Buckley* v. *Valeo, 424 U.S. 1, 126-141 (1976).*

We would have no objection, however, to a provision that would simply recognize the right of the Governor of Puerto Rico to provide the President with advice and information with respect to any "special circumstances or qualifications which should be considered in making" certain federal appointments in Puerto Rico, without a formal requirement of consultation.

TITLE IV—4. COMMUNITY VALUES

Under Title IV, section 411, an exception to the antitrust laws would be made for discussions or agreements among persons in the entertainment industry for the purpose of developing voluntary guidelines designed to alleviate the negative impact of violence, pornography, and drug use in all audio or visual entertainment in Puerto Rico. This exception would be activated by a declaration by the Governor of Puerto Rico. The Department of Justice has no substantive legal objection to the proposed exception.[15]

The Department does, however, object to section 411(c)(2). This section would limit the applicability of the antitrust exception to 36 months after the bill is enacted, and would allow it to be extended for another 36 months upon "declaration by the Governor of Puerto Rico." This would allow the Governor of Puerto Rico to exercise significant federal authority. As explained above, only officials appointed pursuant to the requirements of the Appointments Clause may exercise such authority. The Governor of Puerto Rico is not appointed in this manner, and, therefore, may not exercise this authority consistent with the Constitution.

TITLE IV—5. SAN JUAN NATIONAL HISTORIC SITE ADVISORY COMMISSION

Title IV, section 413 provides for the establishment of the San Juan National Historic Site Advisory Commission to advise the Secretary of the Interior on the operation, management, and administration of the San Juan National Historic Site. The commission is to consist of the Governor of Puerto Rico (or his designee), the Director of the National Park Service (or his designee), three members appointed by the Governor and three members appointed by the Secretary. The Secretary of the Interior is required to meet at least annually with the Commission at a public meeting.

We object to this provision on constitutional policy grounds, as such a hybrid advisory commission would not be clearly answerable to either the executive branch or to the Commonwealth government. Moreover, while we have no objection to a provision authorizing the Secretary's consultation with an advisory commission, we believe it is inappropriate to require that such consultation occur in any specific manner or at specific times, such as the provision's requirement of an annual public meeting.

The CHAIRMAN. Thank you very much, Attorney General Thornburgh, for your excellent, eloquent, and ringing endorsement of self-determination. And I was particularly struck by your awareness and, therefore, the administration's and the President's, awareness of the ticking time clock, the importance of getting this legislation out by the July the 4th recess. And I know your statement speaks eloquently not only to endorsing self-determination by these 3.5 million American citizens, but of getting that now and not further delaying until some vague time in the future. The time for action on this bill is this year, and I am delighted that you and your department and the administration are with us on that.

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[15] Care should be taken that the exception provided for in section 411(b) is limited to activities in and related to Puerto Rico. The provision should be clarified so that the last six words of this subsection clearly refer to all three numbered clauses and not only to the last one.

Of course, we respect your schedule. We are very pleased to have had you here, and thank you very much, Attorney General Thornburgh.

Attorney General **Thornburgh**. Thank you very much, Mr. Chairman, Members.

This is Assistant Attorney General Stuart Gerson.

The **Chairman**. Mr. Gerson, welcome to the committee. Now, you have a number of others. Will they be testifying separately or will they be with you?

Mr. **Gerson**. With the leave of the chairman and the committee, I would propose where some question might be addressed that is outside of my expertise, we might just refer directly to the representatives of the department.

The **Chairman**. Would you like to have them seated?

Mr. **Gerson**. I have no difficulty with that at all.

The **Chairman**. He is accompanied by Mr. Harry Grubert, Office of Tax Analysis of the Department of the Treasury; Mr. Rom Watson, Associate International Tax Counsel of the Department of the Treasury; Brigadier General Michael Byron, U.S. Marine Corps, who is Director of International Security Affairs in the inter-American region; Mr. Martin Gerry, Assistant Secretary for Planning and Evaluation of the Department of Health and Human Services; Mr. Allen Raul, General Counsel of the Department of Agriculture; and Mr. Mike Peay, Assistant Legal Advisor of the Department of State. You have a lot of talent here with you.

Senator **Bradley**. Mr. Chairman, I think that they can probably handle some of the questions, do you not think?

Mr. **Gerson**. It is a well-rounded team. I will try to pass the ball off where appropriate.

Mr. Chairman, I if I might be heard just briefly as to two of what to me were very heartening comments that you made as Attorney General Thornburgh was testifying, and I might like to just point out an issue of clarification that I think you should be prepared to address.

Having been involved in this for a while, I was particularly pleased to hear you say that the subsequent sections to section 1 represented no more than, although it is a lot, the moral commitment of the sponsors and those who hopefully would pass the legislation. I would suggest, respectfully, that as part of that moral commitment, on a truth-in-packaging basis, if you will, it is your intention to inform the voters in the referendum and everybody else as to what the deliverable consequences are of what you do, that you consider the question in that respect of whether Puerto Rico would be incorporated if it voted for statehood before the implementing legislation were passed. I think that the answer to that is probably not, as I have read everything.

The **Chairman**. Well, let us take these one by one, if you will. First, on this question of commitment, it was our intention to have in effect a moral commitment but a real commitment. We would like to make it as strong as we can without being a legal commitment. We understand very well we do not want this to be self-implementing; we have expressly said so.

On the other hand, I think it is important for the Congress to understand that whatever we do should be done knowingly, carefully, with the intention to implement. Now, understanding that changed circumstances or changed minds or, indeed, new people in the Congress can set that awry. But I want to avoid the kind of situation they had in the House where they did not even take a record vote, where no one knew what was in it, where it was just an expression no better than that of 1967, but which would have raised expectations in Puerto Rico.

Mr. **Gerson**. As you can see from my testimony in the House, if you or your staff have had a chance to review it, that was a point that I made for the Department of Justice last year, so I agree with that. My suggestion in this regard is that Congress should express the intent not to incorporate until after the implementing legislation is passed, so that the points you are making are as clear as they could be.

As Attorney General Thornburgh suggested, the delay of statehood is not a triggering event. The issue is that of incorporation, and I just think you ought to make your intentions as clearly——

The **Chairman**. Well, with respect to page 6, lines 17 and 18, we say enactment of this legislation constitutes a commitment by Congress to implement the status receiving a majority. How should we change that?

Mr. **Gerson**. We can send you up some specific language if you would like, but I think what you should say overtly is that it is not your intent to have incorporation occur until after implementing legislation is passed. The implementing legislation is the triggering event to incorporation.

The **Chairman**. In statehood, you mean?

Mr. **Gerson**. Yes, sir.

The **Chairman**. Well, that is certainly clear. I think it is clear elsewhere that that much is fully intended. The question is, what kind of commitment can we spell out that will be a strong as we can? And you can give us your views on that in writing. Perhaps just adding moral in front of commitment would do the job.

Now, have you looked at what the statehooders have proposed in terms of a trial lawsuit?

Mr. **Gerson**. Yes, I have, Sir.

The **Chairman**. And what is your view as to that?

Mr. **Gerson**. We think that it poses more difficulties than benefits. As a matter of policy, we are troubled by nonadversary litigation and feel that there is a substantial likelihood that on a case or controversy basis, that issue would be debated in the courts for a long time. And so the idea of certainty, finality in a quick way that the proposer of that idea would want, would likely be defeated.

The **Chairman**. All right, and that is because of the case or controversy problem, or because of the standing problem?

Mr. **Gerson**. Well, it is both. I think they tie in. I would call it—looking at the genuine case or controversy, I could see that a court might treat it as a matter of standing. But in either event, it is clear that one's opponents in the litigation would be making these points. They would go up through the appellate chain, and that litigation would take up a life of its own that I think would likely defeat the intention of the proposer of that test case provision.

The CHAIRMAN. You think that the court would rule against, in effect stating that the court had no jurisdiction because either there was no standing or no case or controversy, so they would not really reach the constitutionality of the phase-in proposal and the question of uniformity?

Mr. GERSON. Well, I guess there are two things I would say to that. First, there is no way you can guarantee what a court is going to do. But one thing I can almost guarantee is that these are substantial legal issues, and the proponents could very well lose.

In addition, please note that we do not think there is uniformity problem, as the attorney general described. So that you can have this phase-in. You can do basically the kinds of things that you are talking about doing within the 5-year period. I noted at the outset that even if there was a problem, the test case provision would be unlikely to solve it. But please note as well, based on the Attorney General's testimony, we do not think there is a problem.

The CHAIRMAN. Well, I agree. I have always thought that phase-in on statehood—the statehood power was at least co-extensive with the uniformity clause, and as long as the statehood phase-in provisions are reasonable—even if they violated uniformity, I think you could do so if it were reasonable. I agree with you that there is no uniformity problem here.

By the way, there is a new article out in the Stanford Law Review on the uniformity clause and Puerto Rican statehood analyzing this very question, and it agrees with your position and mine, that is that you can do this. It happens to have been written by a former employee of mine.

[Laughter.]

Senator NICKLES. He is still working for you.

The CHAIRMAN. So he is doing good work.

Mr. GERSON. But in any event, our views on that have been spelled out on any number of occasions, when Mrs. Peterson testified with respect to the tax phase-in, and things that Mr. Dennis and I have had to say, and what we have to say in our point-by-point comment. I do not know that there is much I can add to it and, apparently, we seem to have entirely congruent views on that subject.

The CHAIRMAN. Now, the statehood group believes that you cannot discriminate in Federal programs between residents or citizens of different States, and that, whether it is food stamps or SSI or any other thing, that once a State becomes a State, that the plan as worked out by the Finance Committee and by the Agriculture Committee would not pass muster, because they would have to be equal benefits. What is your view as to that?

Mr. GERSON. Without adopting some of the terminology that the statehood party and others use, even in my own analysis, like discrimination and the like of that, I disagree with their point. Starting from a constitutional basis, there is no suspect classification here or any of the traditional views of racial, ethnic, other discernible classification-type discriminations. So the issue is different.

The issue that you face in terms of constitutional analysis is whether there is a rational basis for the distinctions. As I say, discrimination is an unfortunate term. It carries an opprobrium with it. There is a rational basis for the distinctions that the Congress would make.

In terms of the benefits described, I can see at least two, and I am sure the proponents see more of that. Those distinctions become less clear if the provisions are made permanent; I would concede that.

The CHAIRMAN. Well, the Finance Committee has made these permanent. You have two provisions. You have the phase-in provision and then you have the permanent provision.

Mr. GERSON. I understand, yes. All I am saying is the argument becomes a little bit more difficult when they are made permanent, but you can still support it under a rational basis. So as I say, the real issue here, as far as I can see, as we have noted in our comments, is that the Senate or the Congress, as we ultimately get to it, expresses its findings clearly to support the rational distinctions that it decides to make or not to make.

The CHAIRMAN. There is a difference, is there, between the exercise of power under the territorial clause with respect to citizens of the United States and citizens of a State, or are those citizens entitled to exactly the same benefits?

Mr. GERSON. As citizens they are entitled to exactly the same benefits, though, depending upon where they are at the time, they may be treated differently. I will give you an example. If a citizen of the United States residing in Puerto Rico has certain voting rights, he may have more extensive voting rights if he moved to your home State and became eligible to vote there. So as a citizen, there is equality, but depending upon location and other conditions, there may be differences that could be taken away by removing oneself to a different place.

The CHAIRMAN. There is a case, as you know—I do not remember the name of it—that expressly approves of congressional legislation. I believe it was on food stamps—no, Rosario on SSI. That case stated that we had the right to discriminate using the appropriate legal word with all of its baggage. But the Congress had the right to discriminate with respect to Puerto Rico.

Now, the right of a citizen of the United States resident in Puerto Rico does not change or ripen or he would not have any new right. In other words, in your view, the Rosario case would stand for the right of the Finance Committee and the Congress to continue to make distinctions?

Mr. GERSON. I think your understanding is correct. As I suggested a little earlier, I will concede that as some of these things are permanent, and not only permanent but become of long duration and practice, it may be tougher to defend them as a matter of fact, but you still can. So that your basic understanding, I think, remains unchanged throughout.

The CHAIRMAN. Well, it arises not, as you know, from a desire on the part of Congress not to discriminate or distinguish but from the practical requirement that Congress does not want to enact statehood if it costs the Treasury a hugh amount of money. As a practical, political consideration, it would be very difficult to enact statehood and have it cost billions of dollars to the Treasury.

Mr. GERSON. That is at least one of the rational bases that I described.

The CHAIRMAN. And consequently, the Finance Committee was the author of this distinction, and they have kept it budget neutral. And they have done so by, in effect, having programs, food stamps, SSI, et cetera, that are less for Puerto Rico. But your view, to be explicit here for this committee—it is a view of the administration that that can be done and can be permanently done.

Mr. GERSON. Yes, sir.

The CHAIRMAN. In definition of commonwealth. There is a case called *Rodriguez* v. *Popular Democratic Party* from a Supreme Court case from 1982 in which they say and I quote, "At the same time Puerto Rico, like a State, is an autonomous, political entity 'sovereign over matters not ruled by the Constitution,' " and then they quote a number of cases. Is not that what we said, essentially, in our definition?

Mr. GERSON. I am not sure that it is. I think it is what you intend to say, but I think it is just as likely susceptible to a reading that there is some attempt at waiver of the territory clause provision of the Constitution. I am not suggesting, by any means, in making that criticism that the problem is unsolvable. I think it is easily solvable.

The CHAIRMAN. Well, let us see, you need juridical status. That is fair, is it not? Do you have the bill there?

Mr. GERSON. Yes, I do.

The CHAIRMAN. On page 70 in our definition—all right, "Commonwealth of Puerto Rico is a unique juridical status"—we are okay so far.

Mr. GERSON. So far you are okay.

The CHAIRMAN. All right—"created as a compact between the people of Puerto Rico and the United States." That is fair. That is language from the Supreme Court I think, is it not?

Mr. GERSON. So far so good.

The CHAIRMAN. All right—"under which Puerto Rico enjoys sovereignty like a State"——

Mr. GERSON. I think you have to include the next clause to make that a meaningful phrase there.

The CHAIRMAN. "To the extent provided by the Tenth Amendment to the United States Constitution."

Mr. GERSON. That is not so good.

The CHAIRMAN. Okay. And now what is the difference between that and the Supreme Court language, "sovereign over matters not ruled by the Constitution"?

Mr. GERSON. Well, the difference is I think that that language necessarily has to encompass the territory clause. That is not a matter of concern when you are dealing with the Tenth Amendment. As the Attorney General's testimony described, one cannot effectuate Tenth Amendment status by——

The CHAIRMAN. Is the territorial clause a delegated—is that not an enumerated power?

Mr. GERSON. I do not think it is—I do not think it is one Congress can permanently delegate. In other words, at a given time, Congress may take some kind of an action which constitutes a delegation within its terms, but what you would be talking about here is, in essence, a perennial waiver of the territory clause.

The CHAIRMAN. I would submit to you, Mr. Gerson, that these two phrases are legally co-extensive. The Tenth Amendment says this power is reserved. Everything is reserved to the State except that which is delegated to the Federal Government. Is not that right? And the question then becomes, what is the extent of the delegation of the territorial clause. It may not answer your question of the extent of delegation, but it restates the legal concept precisely.

Mr. GERSON. I see why you believe that. I respectfully disagree.

The CHAIRMAN. All right, tell me where is the difference.

Mr. GERSON. The problem with it is that the language is subject to the contrary interpretation. You have created a semantic difficulty, and my best estimate is——

The CHAIRMAN. You see, the problem is, under present law, there is a semantic difficulty. You do not find any semantic difficulty between the statement "sovereign over matters not ruled by the Constitution"?

Mr. GERSON. I guess I could if I were pressed. If you were to ask would I write that sentence on a clean slate, I might not. But I can read that sentence consistently with the Tenth Amendment, because it does not exclude it. In this case, I cannot do that.

The CHAIRMAN. Well, the phrase, "not ruled by the Constitution," I submit to you, is coextensive with the statement "delegated power."

Mr. GERSON. Well, I guess I come back to the point that I made a little while ago. I do not think you can—in fact I more than do not think, I am quite sure that a Congress cannot permanently delegate the power that is encompassed in the Territory Clause.

The CHAIRMAN. No, but the powers are delegated by the Constitution, just like the Tenth Amendment is a statement of the fact that States are sovereign except to the extent that the Federal Government is delegated power. And that is exactly what we are saying with Puerto Rico. Puerto Rico is sovereign except to the extent that the Constitution delegates power to the Congress.

Mr. GERSON. Well, I guess that is true, but it creates, in a sense, the false impression that there is residual power in Puerto Rico. There is not. I mean the Tenth Amendment describes that which the States retain. Puerto Rico does not retain that power, because the Congress can trump it whenever it chooses under the territory clause.

Now, this is a—as I say, I am talking about a semantic problem, because I do not believe that you intend to do anything that we do not agree with in the ultimate terms here. But I am suggesting that there is a difficulty whereby courts can interpret cases against you.

The CHAIRMAN. Well, I think if you will reread those phrases—we are dealing in an area that is not particularly satisfying because there are some unknowable things because the Supreme Court has not spoken explicitly, definitively, and perhaps as clearly as they might on some of these. But I would submit to you that our definition there is right within the Constitution and within what the Supreme Court has said.

Now, within what the Supreme Court and Constitution have said, there are grounds for scholars to argue. But I can tell you that Puerto Rico, if this legislation passes, will enjoy autonomy like a State, and in addition to that, will enjoy autonomy consistent with its character, culture, and location. And I think that is a fact, and that is what we have meant to say. And I think that is legally correct.

Mr. GERSON. I do not disagree with that part of it. As I said earlier, in terms of what ultimately you intend to do, I do not think we have a point of disagreement. What I am suggesting is that there are terms here that can create the fodder for legal disputes and language——

The CHAIRMAN. If you think you can get away from those legal disputes or political disputes over what is the meaning of these words or any words that you might come up with, or definitively dispose of the issue as to what the present status is, you are dead wrong because we have tried and we have tried with this language.

Mr. GERSON. Well, I understand that. No one can dispute it is very difficult stuff. Everybody concedes that and as the Attorney General said, your personal work has been legion in this regard and we recognize and understand that. And know as well that we are not looking to alter the present circumstances that, as to effect, we agree. What we are trying to do in our comments is provide you with as much intelligence as we feel we can give as to a way to avoid disputes and disputes where the result would go the opposite way of that which you intend merely because of the language that is chosen.

As an example, the term "compact," in and of itself, does not present the problem, but when you tie it in with the delegation language, you then raise a question exactly what is this compact? What kind of rights are being created? It is the same point that I——

The CHAIRMAN. And we just restated what the Supreme Court has said. The Supreme Court might have been imprecise when they said, as a compact or in the nature of a compact. But they said it, and we have brought it forward.

Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you very much and I appreciate Mr. Gerson's comments and also those of the Attorney General. And I do think we need to clarify that, because that is a very important issue. And a lot of people I think put a lot of weight on that definition. What kind of a status will be in commonwealth, how much "autonomy" will they have.

Mr. Chairman, I might direct this question to Mr. Watson possibly. I am looking at these various options. I have got some information from the Treasury Department comparing the various options and Senator Bradley is here. I know the Finance Committee did a lot of work trying to equalize these various options of statehood or commonwealth, so they would not have any undue advantage over each other.

The analysis that was done on request of Senator Wallop as I am looking at it, shows significant differences between commonwealth and statehood, which would show that we would need some further adjustments, would that be a correct statement?

Mr. **WATSON**. That is a correct statement, Senator.

Senator **NICKLES**. Would you explain the differences just very quickly between the two?

Mr. **WATSON**. Sure.

Senator **NICKLES**. Under this present legislation, as I am interpreting your figures, it would be economically to the advantage of Puerto Rico to stay under commonwealth, as I am interpreting this?

Mr. **WATSON**. Well, let me just review one fact that we agree basically with the numbers in the joint committee. There is not a question here of differences in revenue projections. The revenue projections that we have analyzed and that we have submitted to the committee generally show that under statehood there may be a technical problem during the transition years. There needs to be some changes, particularly with respect to food stamps, because the Agriculture Committee—amendments to the bill I understand were made after the Senate Finance transition provisions.

The **CHAIRMAN**. If the Senator would yield at that point, we have written to the Senate Finance Committee, Senator Bentsen, asking for implementing language, and it is understood that that implementing language, to conform it to those figures, will be incorporated in the markup.

Mr. **WATSON**. I understand and I would like to emphasize that even during the transition period, there is sufficient revenue gained from the phase-out of 936 to pay for the additional food stamps if that is the committee decision.

Senator **NICKLES**. Could you pull the microphone up a little bit to make sure I can hear you?

Mr. **WATSON**. Once you get beyond the transition period under the statehood option, there would be sufficient revenues to cover fully the projected expenditures. We project that there would be $1.5 billion to $3 billion a year increased revenues under the statehood option once you are in the out years.

I should emphasize that these are very rough numbers. The projections are for many years in the future. And we have done the best with the revenue figures at the Treasury Department, and the departments have done the best with the expenditure figures. But they are rough at this stage.

The bottom line under statehood is that after you pass the transition, there would be plenty of revenue pickup. In fact, there would be additional revenue over the expenditures.

Now, your question was referring to commonwealth.

Senator **NICKLES**. If you went to statehood option, the primary "revenue gainers" would be phase out of 936 and imposition of income tax.

Mr. **WATSON**. That is correct.

Senator **NICKLES**. And if you add those two things together, you would have a net increase of income to the United States by the year 1997 through the year 2000 of a $1.5 billion to $3 billion.

Mr. **WATSON**. Roughly in that order.

Senator **NICKLES**. From those two things. Now, are you assuming that there will also be an increase in outlays and you have deducted that? But you are assuming the increase in outlays would be limited to the provisions that are currently in this bill. This bill has limitations on outlays that would apply to Puerto Rico which do not apply to other States as was discussed by Mr. Gerson and Senator Johnston.

But you were assuming those outlays, those caps on food stamps, caps on other welfare programs, would continue to be in existence, as in this legislation?

Mr. **Watson**. The figures we projected did take into effect all the provisions in this legislation as drafted, so that any caps that are in there that are effective would be reflected.

Senator **Nickles**. If there were no caps in there, how would the statehood option come out? If there was no caps, no differentiation—I think I would rather use the word differentiation instead of discrimination. But if there is no differentiation as far as benefits applied to Puerto Rico, how much expenditures—how much would expenditures be increased?

Mr. **Watson**. I would have to refer to the Agriculture Department on that and HHS to analyze how the removal of the caps would effect the total expenditures.

Senator **Nickles**. Do you have that available now?

STATEMENT OF ALAN RAUL, GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE, ACCOMPANIED BY BONNY O'NEIL, FOOD AND NUTRITION SERVICE

Mr. **Raul**. Mr. Nickles, on behalf of the Agriculture Department, let me state my understanding that there are not caps, per se, but rather the legislation would propose certain eligibility criteria.

Senator **Nickles**. Yes, yes, I understand that. Would you answer my question? If we took that certain eligibility requirements that were put in only for Puerto Rico so we could get this bill on "a neutral basis." If you took that out, how much would outlays increase?

Mr. **Raul**. I am accompanied by Bonny O'Neil from the Food and Nutrition Service. If I may turn to her for that data?

Ms. **O'Neil**. Thank you. Assuming that statehood becomes a reality in 1997, we estimated additional cost to the Food Stamp Program of about $805 million. That would be the first year.

Senator **Nickles**. Per year?

Ms. **O'Neil**. Per year. We do have others: for 1998, $836 million; for 1999, $868 million; for the year 2000, $901 million. This assumes the same thrifty food plan benefit level as in the 48 States mainland and assumes a participation level of about 1.8 million, which is slightly larger than the current program.

Senator **Nickles**. So that is the figure that you already have that I am looking at, at least on this one chart.

STATEMENT OF MARTIN GERRY, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. **Gerry**. Senator Nickles, did you want some HHS program input?

Senator **Nickles**. Well, before we do, I want to get to the cap. I am trying to see how much money you are trying to save by the caps and if we did not have the caps. I am assuming their statehood—let us go that option. You have statehood. You have an effective Senator, and they say, this is discrimination against my State, and therefore, we are going to eliminate it. Senators agree with that, as I think they would, and therefore, there would be no differentiation between Puerto Rico and the rest of the States on food stamps or HHS. How much money is that going to cost? That is my question.

Ms. **O'Neil**. For the first year in food stamps we would estimate instead of the additional $805 million, it would be $1.38 billion.

Senator **Nickles**. $1.38 million, so an increase of about $500-and-some million?

Ms. **O'Neil**. $575 million, yes.

Senator **Nickles**. Okay, and what would it be for the other years?

Ms. **O'Neil**. If Mr. Gerry could answer your question, I will provide that in just a minute.

Mr. **Gerry**. If I can, Senator. I have to take them one at a time. AFDC has both a cap and a limited matching rate, and both control the amount of money.

Senator **Nickles**. What about just adding all of it together for HHS for 1998, 1999, and each year? Take the caps off.

Mr. **Gerry**. I see.

Senator **Nickles**. How much of an increase?

Mr. **Gerry**. And equalize the matching rate? That is the question I have.

Senator **Nickles**. Yes.

Mr. **Gerry**. I can give it to you for 1997, and then I can supply it for the record.

Senator **Nickles**. Okay.

Mr. **Gerry**. For 1997 for AFDC, it would $140 million. For Medicaid, it would be $780 million. For—these are the totals, and I will give you the increases if you want. For SSI, it would be $490 million. And for Medicare, there would not be an impact. Those are the three major programs that would be impacted.

The increase for AFDC over the present would $70 million, so it would $70 million more. The increase for Medicaid over the present would be $701 million. And the increase for SSI over the present would be $475 million.

Senator **Nickles**. The increase for Medicaid would be how much?

Mr. **Gerry**. $701 million.

Senator **Nickles**. Now, that is what I show your expense would be anyway.

Mr. **Gerry**. The expense would be $780 million.

Senator **Nickles**. 780?

Mr. **Gerry**. Yes.

Senator **Nickles**. So it would be an increase of $79 million?

Mr. **Gerry**. It would be an increase of 701. The base, in other words, would be $79 million, which is——

Senator **Nickles**. Actually, it would double.

Mr. **Gerry**. Well, see the cap right now, Senator, is $79 million on Medicaid. The expenditure in 1997, would $780 million, so it would increase by $701 million.

Senator **Nickles**. I see.

Mr. **Gerry**. From a totally capped to a totally uncapped.

Senator **Nickles**. All right. So the total for HHS would be, under statehood where you had no caps?

Mr. **Gerry**. The increase—is it the increase or difference that you are looking for?

Senator **Nickles**. Either one.

Mr. **Gerry**. For those three programs, the total would $1,410,000,000, and the increase would be over the present—just a second to do this—$616 million.

Senator **Nickles**. If we could do this—I do not want to take the time of the committee, but I would be very much interested in those figures with no caps for all these programs, Agriculture and HHS, to compare that. Because I think really to compare a statehood option, we need to compare statehood without the caps.

Under the present system, Mr. Chairman, just so you will follow where I am coming from, as presently drafted, the indication, the information that I have received or we have received from Mr. Watson's group is that right now it would be to the benefit of the U.S. The statehood option would be better and it would be to the benefit of "Puerto Ricans." They would come out better under the commonwealth option. We have all stated that we wanted neutrality. I do not think that we have that yet.

Would that be a correct assumption, Mr. Watson?

Mr. **Watson**. Well, I will leave the difficult decision of neutrality to the committee, but it is certainly true that the expenditures under the two options are the same, and that was the Senate Finance Committee's view of neutrality under the two options, to keep the caps—the expenditures—low enough.

I would say that in the 1997 year that we are talking about at the present time we have an additional $1.5 billion projected to pay for any additions, if you wanted to pay for the caps in any way.

Senator **Nickles**. So the point that you are making, and I appreciate that, if you took the caps off and also eliminated 936 and had, I guess, full imposition of personal and corporate income tax, there would be revenue generated of $1.5 billion?

Mr. **Watson**. No, I am saying under the current system with the caps we show an additional $1.5 billion. So if you change the caps, then, until you have used up $1.5 billion, it would remain deficit reducing.

Senator **Nickles**. But it also looks to me like when we did eliminate the caps—and I am confident that we would—that $1.5 billion would also be spent. I think if you look at, we are going to be spending next year $500 million in Agriculture and maybe an additional, what, $700 million?

Mr. **Gerry**. Excuse me, Senator. There are two different caps and that may be part of the confusion. There are caps on the programs and then there are caps on the sums of the programs. In other words, right now there is a specific cap for AFDC of $79 million, a specific cap—I am sorry, of Medicaid of $79 million, and a specific cap on AFDC of $70 million.

Senator **Bradley**. Could you say that? Would you please say it again?

Mr. **Gerry**. I am sorry, Senator. Right now there is a cap of $70 million on AFDC and a cap of $79 million on Medicaid and a cap of $15 million on AABD. There is no SSI program. So that is one set of caps that the bill takes off, and it takes them off at a rate usually of 25, 50, 75.

There is another cap in the bill on the sum of those programs, and the way, as I understand the bill, the way you calculate that cap is you add up all the expenditures you would make if Puerto Rico were to be treated as if it was any other State, and then you subtract from that—I am sorry. You take the tax revenue that increases from the change in the tax treatment and you subtract from that the sum of those program entitlements.

If it is zero, then of course there is no cap. But if the tax revenue that is collected is less than what would be paid out in additional funds, then there is a cap at the level of the tax revenue. So that is a second cap and that is what I was trying to explain.

Senator **Bradley**. That is the $1.5 billion?

Senator **Nickles**. No, the $1.5 billion was the additional income tax and phasing out 936.

Mr. **Gerry**. We do not know what that cap is, Senator Bradley.

STATEMENT OF HARRY GRUBERT, OFFICE OF TAX ANALYSIS, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY ROM WATSON, ASSOCIATE INTERNATIONAL TAX COUNSEL

Mr. **Grubert**. That reference to one of the caps was during the transition, where the expenditures are limited by the amount of available revenues. But that is not effective after the transition.

The **Chairman**. Would the Senator yield and share with us why he has the view that the caps would be taken off?

Senator **Nickles**. Well, Mr. Chairman, I have listened attentively to the hearing that we had the other day and the proponents for statehood when they talked about the unfairness of the limitation of caps. I also heard your statement that basically said, well, we can do it, and that may well be supported.

But I cannot help but think that, once, assuming that statehood was the option selected, that Congress would endeavor to treat Puerto Rico as all other States and not differentiate between Puerto Rico and other States. And maybe I am incorrect.

I will give you an example. We right now have a different minimum wage law—no, we have a minimum wage law that applies to every State in the Nation. We have an exemption or an exception for Puerto Rico. I doubt that that would transfer after statehood. Now, it might. There may be reasons to do it.

But I see some of those things being eliminated.

The **Chairman**. That has been repealed, by the way. Only American Samoa has that distinction.

Senator **Nickles**. I am not sure that is correct. I think there is a distinction. I believe there is a distinction. I have worked with those wage laws for a little while.

But regardless, there are those differences. I would not call it discrimination. I would call it differentiation. Again, I would think that, if there are two Senators sitting on this committee or one Senator from Puerto Rico saying, we think we should be treated the same for eligibility for food stamps, et cetera, I expect that under a short period of time they would be successful.

I think we need to plug that into our equation, and I guess that is my point. When we are considering the statehood option, I guess it is okay to do it with the limitations imposed by the Agriculture Committee and the Finance Committee. But I also think we need to look at without these so-called caps and limitations, so that they be treated as all other States, so we can really look at it, because really that is what in all likelihood is going to happen after a short period of time.

The **CHAIRMAN**. Well, I apologize for the interruption on the Senator's time. But I simply point out that there are all kinds of distinctions between States, between, for example, low-income energy assistance. States in the Northeast get a lot more. I mean, it is a very complicated formula, but it has to do with more than just degree days. It is degree days squared.

And the money comes up here. How? Because they had the political muscle to get it.

Western States get more of highway revenues than other States, and you can say there is a rational basis for that because of the wide open spaces.

Senator **NICKLES**. I just think we ought to consider everything very forthrightly and consider the statehood option. I noticed repeatedly in the Attorney General's statement that he said, we are for self-determination for Puerto Rico. I think we really need to consider whether statehood should be in that option, and we should fairly consider the cost of these options. And I hope and I expect that we will do that.

And I have also heard everyone in this panel say time and time again they wanted equitable options. So we are not trying to sway the Puerto Ricans toward one status or another, and I think that is vital as well.

Mr. Chairman, thank you very much.

The **CHAIRMAN**. Thank you, Senator Nickles. Senator Bradley, and thank you for your patience.

Senator **BRADLEY**. Thank you, Mr. Chairman.

Mr. Raul, what is the formula? You answered Senator Johnston's question on caps by saying: There are no caps; there is just a change in the formula. What is the change?

Mr. **RAUL**. Well, there is a different threshold for the level at which the poverty line kicks in for benefit eligibility under the new legislation. If I can ask Ms. O'Neil to discuss that in greater detail.

Ms. **O'NEIL**. The eligibility limit would be 65 percent of the——

The **CHAIRMAN**. Excuse me. Could you get the microphone.

Senator **BRADLEY**. Why do you not just take a seat at the table.

Ms. **O'NEIL**. It would be 65 percent of the poverty level that is in the United States. We also have certain deductions, for instance a standard deduction, in the normal food stamp program, and for Puerto Rico it would be set at 59 percent of that deduction.

We have a shelter deduction that is capped for the food stamp program, and in Puerto Rico the cap would be 35 percent of what it is in the United States. And then the Thrifty Food Plan would be the same as in the States.

Senator **Bradley**. What was the last thing?

Ms. **O'Neil**. The shelter cap, 35 percent.

Senator **Bradley**. So that the change in the formula basically says that eligibility for food stamps in Puerto Rico would be 65 percent of the poverty level in the United States?

Ms. **O'Neil**. That is correct.

Senator **Bradley**. And 59 percent of the standard deduction, and 35 percent of the shelter cap?

Ms. **O'Neil**. That is correct. These numbers reflect the situation prior to Puerto Rico going to the nutrition assistance program, in other words the 1981 food stamp program as it operated in Puerto Rico.

Senator **Bradley**. So that if Puerto Rico were to receive more money, as Senator Nickles has hypothesized, which way would those numbers have to go?

Ms. **O'Neil**. They would go closer to the 100 percent, and for total equality they would go all the way to 100 percent of what is in the States.

Senator **Bradley**. So that in effect what you are saying is that the poverty level in the United States, those who are in poverty would receive more than those who are in poverty in Puerto Rico, is that correct?

Ms. **O'Neil**. That is correct.

Senator **Bradley**. Is there a difference in income eligibility levels?

Ms. **O'Neil**. That is the income eligibility level.

Senator **Bradley**. So that it is set as a percent?

Ms. **O'Neil**. Yes. Let me correct my answer when I said that was correct.

Senator **Bradley**. So in a sense, this does amount to—I mean, if you are hungry, does this mean that you get less food in Puerto Rico?

Ms. **O'Neil**. The benefit level itself is the same under the statehood option as in Virginia, for instance. Because the amount of benefit depends on how much income you have and that income is calculated by these various deductions, there will be a difference and people will receive slightly less.

Senator **Bradley**. So it means that if you are hungry in Puerto Rico you will get less——

Ms. **O'Neil**. Depending on how the deductions play, yes.

Senator **Bradley** [continuing]. Than if you were hungry in Oklahoma.

Ms. **O'Neil**. That is correct, because of the deductions.

Senator **Bradley**. Well, that is a little different than highway formulas, it seems to me. And I just wanted to get those numbers locked in.

Senator **Nickles**. Would the Senator yield just so we can kind of complete this? The eligibilities on income and the income is significantly less in Puerto Rico than it is in most of the States. Presently you have what percentage of Puerto Ricans that are on food stamps?

Ms. **O'Neil**. About 40 percent.

Senator **Nickles**. 40 percent. If you went under statehood and there was no cap, what percentage of Puerto Ricans would be on food stamps?

Ms. O'**Neil**. It would be greater than 50 percent. I cannot give you an exact number.

Senator **Bradley**. That is, unless there was a tremendous boom in the economy due to investment, growth, and higher incomes. So it is difficult to project, is it not?

Senator **Nickles**. Maybe you could supply that for the record.

Ms. O'**Neil**. Yes, thank you.

[The information referred to follows:]

PUERTO RICO STATEHOOD OPTION CHANGE IN NET FEDERAL EXPENDITURES

(Assumes Eligibility and Benefit Standards Conforming to Mainland U.S.; Outlays in $Millions)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Discretionary Programs, Total [1]	0	0	0	0	0	0	0	0	0	0
Entitlements—Health and Human Services										
Aid to Families with Dependent Children [2]	0	30	70	70	70	70	70	5	5	5
Aged, Blind, and Disabled (SSI) [3]	0	0	40	340	705	1,145	1,245	1,330	1,415	1,505
Medicaid	0	51	151	301	501	701	1,001	1,351	1,751	2,251
Foster Care	0	0	3	3	3	4	4	4	4	4
Total Health and Human Services	0	81	264	714	1,279	1,920	2,320	2,690	3,175	3,765
Agriculture—Nutrition Assistance [4]	0	0	113	250	338	1,380	1,433	1,487	1,544	1,603
Change in Spending	0	81	377	964	1,617	3,300	3,753	4,177	4,719	5,368
Increase in Revenue [5]	0	0	264	714	1,279	3,613	5,544	5,971	6,436	6,942
Net Change in Spending [6]	0	81	113	250	338	(313)	(1,791)	(1,794)	(1,717)	(1,574)
Memo:										
Cover overs excluding nutrition assistance [7]	0	0	460	1,167	1,839	[9] 1,095	N/A	N/A	N/A	N/A
Cover overs including nutrition assistance [8]	0	0	347	917	1,501	[9] 1,095	N/A	N/A	N/A	N/A

Source: Estimates from the Departments of Health and Human Services, Agriculture, and Treasury.

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[1] No net change from Current Status out-year estimates.

[2] Reduction in 1999 assumes Puerto Rico will not continue the unemployed parent program beyond the mandatory five year period.

[3] Assumes eligibility and benefit standards conforming to mainland U.S.

[4] This calculation uses the historical relationship between average benefits in Puerto Rico and the mainland U.S. from 1982 when Puerto Rico was in the Food Stamp program. Assumes additional participation due to increased eligibility and other program thresholds matching the mainland maximum benefit and other rules.

[5] For 1994 to 1997, increased revenues resulting from phase-out of Section 936, and phase-in of personal, corporate, and excise taxes, will be returned to Puerto Rico to the extent they are not needed to cover additional HHS program costs. Amounts shown on this line show increased revenues retained by the Treasury. Beginning in 1997, rum taxes and tariff collections and any other cover overs or transfers are no longer returned to Puerto Rico.

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[9] Cover over to Puerto Rico in last quarter of calendar 1996.

Senator **Bradley**. I would like to go on if I could, just to go down through a few issues that I think I heard the Attorney General say, and I just want to confirm with Mr. Gerson. It is your view that a phaseout of section 936 would not be a violation of the uniformity clause?

Mr. **Gerson**. That is correct.

Senator **Bradley**. Is it possible under this view to phase out any other tax benefit for a particular State?

Mr. **Gerson**. Subject to the overall caveat that I expressed earlier, that if you are going to maintain a difference there has to be a rational basis for it.

Senator **Bradley**. So that a rational basis——

Mr. **Gerson**. I may have misspoken myself. Ultimately you must reach tax uniformity. The ultimate position on tax matters is one of equality.

Senator **Bradley**. So no additional benefit, and therefore you can phase out an additional benefit.

Mr. **Gerson**. If there was an additional benefit, by hypothesis.

Senator **Bradley**. This is an almost unique circumstance from your perspective.

Mr. **Gerson**. From my personal perspective, it is most unique. There may be other circumstances of which I am unaware.

Senator **Bradley**. Let me ask you, does anything in this legislation state what would be the circumstance with regard to language?

Mr. **Gerson**. I am sorry, language about what?

Senator **Bradley**. The language that is used in the schools of Puerto Rico.

Mr. **Gerson**. Oh, I am sorry. No, it does not. There is nothing in the bill that deals with that.

Senator **Bradley**. Well, what is the expectation?

Mr. **Gerson**. As far as the Department of Justice is concerned, we have no expectation as far as an official language is concerned. Whether that could be mandated by the Congress under a continuing relationship, it could be, but we have no expectation.

Senator **Bradley**. Well, you see, my concern is that one of the more fundamental issues of this whole debate has basically been slipped by the Congress. Everyone in Puerto Rico assumes that they are going to continue to have Spanish taught as the basic language in the bulk of the schools. Once there is a State, it is conceivable that there might be a law saying that, if you receive education dollars, those education dollars, the language has to be English.

What is the administration's thought about this? Now, you are all technical experts, so probably you can slip it again, because the Attorney General left. But I was just curious.

Mr. **Gerson**. Well, I will not slip it.

Senator **Bradley**. That is not a pejorative.

Mr. **Gerson**. No, I understand it. But I will not slip it, in the sense that I can tell you with some definitiveness on what the law could be on the subject. I must slip it in the sense that you are going to have a prerogative that I cannot take away from you one way or another.

To make it as clear as possible, if there was a provision inserted in this bill mandating that Spanish be the official language in a continuing relationship, in a commonwealth relationship, there would be no constitutional problem surrounding it, as long as it were premised by sufficient findings that I or somebody who worked for me would be in a position to defend the provision on a rational basis.

You have commerce clause powers. You can describe what is necessary to promote commerce, and it could be different in one place from another.

Now, the question you are asking me is the opposite of that, which is could I eliminate the possibility that the Congress in its wisdom were to pass an English-only provision. Well, there might be a bunch of constitutional problems with that that arise of an individual nature, and I cannot decide them here.

I think, as you well know, the issue of English-only is a debatable one, and several States have confronted that and there are tests, and I cannot predict or guarantee the outcome.

Senator **Bradley**. Well, would you say if at least we do not face the issue that it is conceivable, if Puerto Rico comes in and Spanish is the language, that that sets the precedent for other school districts in other places to argue that Polish, or pick your language, Arabic——

Mr. **Gerson**. Well, it might. But I guess where the administration comes out on these things, as on most things of this nature, is that you end up with matters of choice.

Senator **Bradley**. Well, let us say that you are in the Upper Peninsula and you are in a school that is 80 percent Islamic. Is it possible, having Puerto Rico in, using education dollars teaching Spanish, that that argument might be, well, we will use Arabic?

Mr. **Gerson**. Well, there is something, as you well understand, that is rhetorical in that nature. You obviously cannot foreclose it as a matter of possibility.

Senator **Bradley**. But nothing in this bill addresses the issue of language; that is the point you are making?

Mr. **Gerson**. Yes. I said so and I agree.

Senator **Bradley**. Okay. Let me ask you, let me ask you——

Mr. **Gerson**. At the same time, I just want to make it clear that, if the committee and if the Senate or if the Congress together at a later time wanted to address the issue the opposite way from what you describe, in other words exercise its commerce clause powers to find a reason for a difference here, it could do so constitutionally.

The **Chairman**. Will the Senator yield at that point?

Senator **Bradley**. Sure.

The **Chairman**. Would there be a difference in the power of Congress with respect to language in commonwealth and in statehood?

Mr. **Gerson**. Well, no, no, there would not be.

Senator **Bradley**. So that in commonwealth the same thing could occur?

The **Chairman**. Yes, we could order Arabic—if we could order Arabic, we can do it now as well as we can under statehood.

Senator **Bradley**. In the State as well as the commonwealth, in a commonwealth as well as a State, that is what you are saying. Okay.

The **Chairman**. So there is no change in that power.

Senator **Bradley**. Let me ask you, in terms of the law as you know it, would Puerto Rico be able to have its own Olympic team?

Mr. **Gerson**. I do not know if that is a matter of national sovereignty. The Senator would know that better than I would.

Senator **Bradley**. No, I am not a lawyer.

Mr. **Gerson**. Well, I think that the United States does not sponsor the Olympic team.

Senator **Bradley**. So basically, it is up to the International Olympic Committee to decide who is allowed to participate, and governments have no legal right to intervene?

Mr. **Gerson**. Well, some governments I am sure do, but this Government I do not believe sponsors its Olympic team.

Senator **Bradley**. So you believe the U.S. Government has no legal right to intervene in this matter?

Mr. **Gerson**. Well, it has never asserted a legal right.

Senator **Bradley**. But do they have it? Do we have it?

Mr. **Gerson**. I do not know the answer to that.

Senator **Bradley**. Could you give us that for the record?

Mr. **Gerson**. I can, but I can tell you historically. I do know what the answer is historically as an official in sports, that these things are left to the national committees for each sport and that the Olympic team itself is a privately established foundation. That determines the answer.

Were Congress somehow to attempt to subsume that, it would be upon hypothetical circumstance and I do not know what the basis for it would be. But it would be inconsistent with our political and legal history.

Senator **Bradley**. Okay.

Thank you very much, Mr. Chairman.

The **Chairman**. Thank you, Senator Bradley.

With respect to Treasury, we talked about, if the caps were taken off food stamps, what the dollars increase would be. Can you tell me whether or not, if those caps were taken off, whether statehood would still be revenue neutral?

Mr. **Raul**. Is that for Treasury, Mr. Chairman?

The **Chairman**. I guess that would be for Treasury. Whoever.

Mr. **Watson**. It would depend in that case whether there was sufficient revenue collected under the phase-out of section 936. Now, as I mentioned before, after the transition period we have an additional $1.5 billion projected in 1997. This is assuming implementation legislation in 1992, in which case Puerto Rico would become a State on January 1, 1997, under the current bill.

The following year there would be approximately $3 billion projected additional revenue. So when you mention offsetting that extra revenue by changing the caps, we would have to compare that to whatever provision you suggested for the caps themselves. There would be a cushion, and the question is whether the changes you suggest would use it up completely.

The **Chairman**. Well, it looks to me like that that cushion ought to be enough. I mean, obviously you have to make assumptions, and your chart has made assumptions already. But under general assumptions, would you not say that that cap would probably be enough?

Mr. **Watson**. Again, it depends on the expenditure side. From the numbers we heard this morning, it sounded like $3 billion would be enough to cover removing those caps, yes. But we would be happy to submit an additional analysis to you showing that difference.

The **Chairman**. Would you do that?

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[9] Cover over to Puerto Rico in last quarter of calendar 1996.

The **Chairman**. Because I think that would be a very important finding, and you might give us a structure of caps that matches revenue neutrality. I mean, if taking off the caps does not lead to revenue neutrality, you might suggest a structure that would in effect use up the difference, but still be revenue neutral.

Can you do that?

Mr. **Watson**. We would be happy to work with the agencies on the expenditure side and submit those numbers, yes.

The **Chairman**. All right. Now, to be clear on this, and you have said it but just to make it very plain, it is Treasury's view that under independence and statehood the Treasury of the United States makes money?

Mr. **Watson**. After the transition period, that is very clear. Under both statehood and independence, during the transition period, as I mentioned, there are some technical difficulties in the bill the way it is drafted now. But there is sufficient revenue to take care of those technical difficulties.

So with those changes, we would see revenue neutrality both in the transition period and following the transition period. With respect to independence, it makes money both during the transition and afterwards.

Senator **Nickles**. Mr. Chairman, to clarify that as far as making money, you are talking about compared to present status of commonwealth under current law?

Mr. **Watson**. That is correct.

Senator **Nickles**. Because we are talking about a significant amount of expenditures, about $6.5 billion expended in 1991. So I just want to make sure that that is clear.

Mr. **Watson**. That is correct.

The **Chairman**. Now, under a number of Federal programs—Medicaid, AFDC, highways, others—you have matching funds from the Federal Government and various States choose to put up more. New Jersey chooses to put up more than some other States, I know, on AFDC. So in effect you have a larger Federal payment, to use the example, to hungry people in some States than you do in others, do you not?

Mr. **Gerry**. That is absolutely correct, Mr. Chairman.

The **Chairman**. Can you suggest some other ways that come to mind other than Medicaid, AFDC, low-income energy assistance? The width of the outer continental shelf for purposes of receiving revenues—my State receives 3 miles; other States are 10.5 miles.

There are all kinds of distinctions, are there not, between States that, unfortunately, seem to be at least permanent distinctions.

Mr. **Gerry**. Yes, Mr. Chairman. As a matter of fact, the history of formula grants has been the history of various committees of the Congress crafting formulas that end up in distinctions among the States on a variety of factors.

The **Chairman**. Do you know about timber receipts?

Mr. **Gerry**. I am not too familiar with that, Mr. Chairman.

The **Chairman**. They are a lot different. Do you know about payments in lieu of taxes on minerals? In some States they get, what, 50 percent, and in others, I think 90 percent in Alaska. Alaska still wants 90 percent if they find oil up in the Arctic National Wildlife Refuge. I think all States ought to get that.

Mr. **Gerry**. The example I was thinking about, with respect to education, Mr. Chairman, where the formula grant programs distribute money to the States on a variety of different formulas, and individuals in each State end up with quite different amounts allocated based on those formulas.

The **Chairman**. Can you give us some of those?

Mr. **Gerry**. Chapter 1 of the Education Improvement Act, which is the largest education program, is probably the best example, and it is allocated on a fairly complex formula that takes into account the comparative levels of poverty in different States, so that the amount allocated to each State varies quite a bit based on the characteristics of the State's population.

The **Chairman**. So if you are a poor, illiterate child in one State, your share of the grant would be less per capita than the same child under the same circumstances in another State?

Mr. **Gerry**. That is absolutely correct, Mr. Chairman.

You mentioned the matching rates. The matching rates result in a different allocation of Federal dollars per capita because, for example, it ranges from 50 percent to 80 percent, the Federal contribution. So for each of those per capita expenditures which look the same, the Federal contribution varies tremendously among the States based on, again, the relative poverty level in the States.

The **Chairman**. The impact upon children similarly situated is vastly different, is it not?

Mr. **Gerry**. Yes, it is, Mr. Chairman.

The **Chairman**. I hope you are listening to this, Senator Nickles.

Senator **Nickles**. Yes.

The **Chairman**. Mr. Gerry was just detailing how the impact on poor children or needy children of Federal programs is vastly different, depending on different States in which they live and the impact of these complicated Federal formulas. So this is not anything new that is being proposed to treat States differently.

I mean, it is probably more the rule to treat States differently than it is to treat them exactly equally, is it not?

Mr. **Gerry**. Well, in our programs, which are probably about 85 percent of the domestic budget, it is almost always the rule that in one way or another States are treated differently by one formula or matching rate or some other device.

The **Chairman**. And the effect of that is that children or poor people or needy people living there are treated differently, even though they might be otherwise similarly situated, except for the accident of their geography?

Mr. **Gerry**. Yes, that is true, except in the direct Federally administered programs, I think that is almost universally true.

Senator **Nickles**. Mr. Chairman, could I follow up?

The **Chairman**. Surely.

Senator **Nickles**. Because I understand that and I appreciate it. But let me also mention kind of a concern that I have. I am very interested in the development of Puerto Rico and Puerto Rican citizens. I do not want the development of a welfare State, and I am afraid that we may have done that to some extent under present commonwealth status.

I am looking at the figures of outlays and I was just kind of computing it, and I think if I am correct—maybe somebody that is quicker with a pencil than I am—but we are spending right now expenditures of $6.6 billion right now. And if we have got a population of about 3.5 million people, I think that is about $1,900 for every man, woman, and child, plus or minus.

Looking at the out years, under present status if that increases to $11 billion or $12 billion you can almost double that, so you are looking at $3,700 or something in outlays. You are looking at, I think I heard, Mr. Gerry, your associate mention that 40-some percent were on food stamps today; is that correct?

What is the average in the United States?

Ms. O'Neil. It is at 8 percent.

Senator Nickles. Eight percent across the United States, but 40 percent, was that it?

Ms. O'Neil. Yes. And it would be 50 percent when they have the food stamp program in Puerto Rico.

Senator Nickles. I did not hear you.

Ms. O'Neil. When there was a food stamp program in Puerto Rico in 1981, it was over 50 percent.

Senator Nickles. And now it is 40 percent?

Ms. O'Neil. About 40 percent.

Senator Nickles. Forty some.

Ms. O'Neil. It is just about 40.

Senator Nickles. And if there was no cap, it would be above 50, did I hear you?

Ms. O'Neil. It would be about 55 or 56 percent.

Senator Nickles. About 55 or 56 percent.

I am concerned. Do not get me wrong. I am very interested in Puerto Ricans having nutrition, et cetera. But I am also concerned about the long-term economic future and health of Puerto Rico if they become too dependent on subsidized Federal assistance. I do not want Puerto Rico or any other State or any other component of any other State to become too dependent on Federal welfare.

We have had some cases of that in our own States, where it has not worked very well. I have Indian tribes that are very dependent on Government assistance. Their economic well-being is not very good. So I want to encourage just the opposite.

It does not mean we want to be less than compassionate. I want to be compassionate, I want to help them. But I think in the long term we might be able to help them not just by writing Government checks. I guess that is my point.

I have visited with many Puerto Ricans and I have the greatest respect for them. They do not want to become a welfare State. Maybe some do, but I do not think they do. So we have to be careful that we do not come in, since we have a significantly different economic base, formulas for programs, and so on, and say, here, adopt this, and end up taking away incentives, initiatives to work, to progress, to make really significant economic independent progress, independent of the Federal Government.

I guess I do not want people to become more and more dependent on Uncle Sam and just see outlays increasing, unemployment increasing, crime increasing, that are dependent with that. We have seen that in many of our urban areas, we have seen it on some of our tribal lands. We certainly do not want to assign that kind of a future to Puerto Rico.

So whether that is modified through any of these options—I do not care if you are talking about commonwealth or talking about statehood—I think that is a vitally important question that we address, and how we work on that I think is going to be very important for the people of Puerto Rico.

Mr. **Gerson**. Senator, I agree that you are raising a political issue of great importance. I would only note that that is the second rational basis besides revenue neutrality, budget neutrality, for having the caps, is to make that kind of a judgment, and to that extent it might speak against your hypothesis that you and your fellow members would be likely to repeal the caps.

That is one of the reasons why you might retain them, in order to have that balance, to avoid undue welfare dependency, and to promote a viable indigenous economy. I just as a logical matter would want to add that.

Senator **Nickles**. I am aware of that, but I am also aware of the fact that if you had a couple of Senators and several Representatives and they would be saying, do not discriminate or do not differentiate on my State, that they would have a compelling argument as well.

Thank you very much. Mr. Chairman, thank you as well.

The **Chairman**. Thank you.

Mr. Gerson, in section 402(b) we have a policy statement and it is stated as a policy statement that urges Congress and the Federal Government to consider the unique geographic, economic, and social conditions in Puerto Rico in applying the powers of the United States under commonwealth.

Do you believe that this provision can be refined into a useful tool to encourage Federal agencies to consider Puerto Rico's unique circumstances, or do you have any fundamental objection to any such policy statements?

Mr. **Gerson**. To the extent that we have a problem with the total bill, it is not so much in that section taken alone, but if you go on under section 404, the Governor of Puerto Rico could force agency reconsideration of its actions for conformity with this policy and could challenge an unfavorable outcome in court.

Thus, by making a general policy statement you are creating question of law to be interpreted and applied by the Federal courts. And as we noted in our point comments, that is the source of our opposition. The idea that agencies ought to act rationally, in a sense, to take into account differences is a fair point. But when that takes up a mandate, a legal mandate——

The **Chairman**. Certainly section 402(b) does not do that.

Mr. **Gerson**. I said that. But it is when you read it in tandem with section 404 that you have difficulty.

The **Chairman**. Your statement I do not think took section 404 to task, did it? Did I miss something?

Mr. **Gerson**. I believe that we have included that in our section by section comments, Senator.

The **Chairman**. Oh, you did?

Mr. **Gerson**. Here, I have it here. On page 33 in the middle of the page, the point that I am just making is made at somewhat greater length.

The CHAIRMAN. I am sorry, I did not get your section by section comments.

Mr. GERSON. If we were remiss in that regard, I apologize. And if upon reading it, if you or the staff have any future question of us, needless to say we will respond to it.

The CHAIRMAN. Well, what you might do, we will of course go through your comments very carefully. But while we are here, since this is likely to be our last hearing on this—we are going right to markup—would you care to give us your principal objections?

Mr. GERSON. Well, the principal objection is that 404 would take the 402(b) statement out of the realm of a general policy statement and have the tendency, at least one would argue, to create an enforceable right by the Governor.

The CHAIRMAN. Well, that is our intention.

Mr. GERSON. If it is, I think you have created the difficulty. You have not made a general policy statement; you have——

The CHAIRMAN. Well, 402(b) is clearly a general policy statement, which ought to set the mood, and section 404 ought to carry out the spirit of that, and there is nothing wrong with the spirit of that. I mean, for example, if you have a requirement of the highway department that there must be snowproofed highways and if that obviously, as it does not, did not apply to Puerto Rico, should there not be some way for the people of Puerto Rico to say, look, we are different, we do not have snow problems down here?

Mr. GERSON. Well, I guess I have problems with any personal grant of standing, any special grants of standing, as a matter of principle. I cannot say in this case that what you are talking about in section 404 is legally impermissible. My point is I believe it is unwise.

I believe that what you do is create the potentiality for a lot of confusing litigation. Now, again, as one of the staff people points out, you could conceivably have an appointments clause problem there. I am not sure about that. One might argue that. I think it certainly would come up in that issue.

I guess you could treat that by looking on pure standing grounds and say that 404 would be subject to the Constitution and all of the law concerning standing and case or controversy, in an attempt to get around an appointments problem. But if you are creating this special position with the Governor of Puerto Rico or his delegate, you do get to the question of who could fire him from the position as far as asserting some rights.

One way or the other, though, it seems to me that you might be able to justify it on a pure legal ground, although there would be a lot of legal issues to surmount. But one thing I am certain of: You would gain a lot of litigation that would be confusing and not necessarily productive.

The CHAIRMAN. Well, I am very reassured by your saying that you think it is legal.

Mr. GERSON. Well, I said it might be. I said it might be.

The CHAIRMAN. There are a lot of lawyers in the audience who think that the safety of the Republic lies in a well-paid bar.

Mr. GERSON. Well, as far as the lawyers benefit codicil there, I think that is without question. As far as the legality, that is questionable. As I say, I can fashion some interpretations to skate it by. I would prefer to never have to have to do that, and I certainly can envision the problems.

The **Chairman**. Thank you.

Can you give us any other principal objections here which we might discuss?

Mr. **Gerson**. None other than what the Attorney General described in broad brush in his testimony, or that we have described in our point by point comments. If it is an impediment that these were presented to you unduly close to this actual hearing, I would suggest that our two staffs work rather closely straight away to clarify that, and I offer all the assistance of our folks at the Justice Department in order to help.

But I would say that we have tried succinctly to point out all of our difficulties. A lot of the suggestions we make are not particularly weighty. They are technical in nature, a word here, a comment there.

The **Chairman**. There certainly are ambiguities in the two-stage procedure. I certainly think your comments are well taken with respect to the word "commitment." We ought to change that.

I have noted, it is not our intention to create any automatic triggering device there. So we can work that out.

I understand that you object to the provision on strategic denial, which requires the consent of Congress to alter or modify on strategic denial. I understand that reverses your position on Micronesia.

Mr. **Gerson**. I am not sure that it does, and I say that literally because I am not clear in my own mind if a meaningful distinction can be made between Micronesia and Puerto Rico. Micronesia as I understand it has a lot of special characteristics to it, and I will confess that I am not now equipped to respond.

I will also admit that I find some of the advice that we gave potentially troubling. What I would propose to do is seek a formal opinion of our Office of Legal Counsel on that subject and provide it to you as quickly as we can.

The **Chairman**. Well, I was deeply involved in Micronesia, as was the late great Scoop Jackson and Jim McClure. So we felt very strongly about strategic denial.

Actually, the independentistas had severe objections to our draft of last year, which had two things in it: first, a description of the limits of what defense would have to require, the uses of bases. It went into some detail on that; and it also spoke of denial, that the declaration of independence be effective only upon the negotiation of a treaty which provided for both of those things, the full defense rights and strategic denial.

We have decided to excise from this draft all of the details of the defense arrangement, what bases, what uses, all of that. That is for an independent Puerto Rico, if it were such, to negotiate, for us to determine that with Puerto Rico, and that would be proper.

Putting in the requirement for strategic denial obviously has got to be negotiated. The whole thing. If Puerto Rico chooses independence, the whole thing is negotiated, and we could not bind the executive in its negotiation of such a treaty, nor the Congress in what it would decide in a future Congress.

But it was our feeling that it is very important to make clear, just as we do not want to mislead Puerto Ricans. I mean, there is no way that we would allow independence and allow Puerto Rico to become a foreign base for hostile activities, just no way we would do it, and we might as well make that plain up front and put it in this.

Mr. GERSON. We agree about that, too. So the only question that is being raised in that—and there is a representative of the Department of Defense and if you want to hear him rather than me say it, we can do that. But it is very clear that everybody is in agreement about the point that you have just stated.

So what we are talking about here is the viability of the legal mechanism in order to guarantee it. And as I say, I propose to act in accordance with the way we just described.

The issue, as I see it, is whether the Micronesian precedent, A, is entirely correct under our present thinking and, if it is, whether that is applicable to the status of Puerto Rico. But as to the ultimate outcome that you describe, there is not a scintilla of difference between us.

The CHAIRMAN. In 1984, by the way, on our hearing to approve the Compact of Free Association, I asked Ambassador Zeder at that time: "With respect to the denial right, no change could be made by the executive without an Act of Congress?"

Fred Zeder said: "That is correct, Senator."

Mr. GERSON. I am aware of that. I appreciate the staff's having suggested the issue here. We have considered it. As I say, the question in my mind is not whether that advice was given. Clearly, it was. It has to do with its applicability to the present circumstances.

The CHAIRMAN. Just to reiterate your view, I go along with your view, that is that the statehood power gives the Congress the right to phase in whatever benefits or taxes or whatever, even if they violated perhaps the due process clause or the uniformity clause or others, so long as they are rationally calculated to make for a smooth transition, limited in time, not unreasonable in their operation, that the statehood power gives you that right to do that; is that correct?

Mr. GERSON. Well, I agree with your general thesis. The only place I would take issue with you is if there were a rational basis, for example, for a differential, an ongoing differential, not in terms of tax but in terms of benefits. That would not violate the Constitution if it had a rational basis.

So I would not accept the part where we are assuming a constitutional violation. There would not be any, again, if there were a rational basis.

As far as the tax uniformity side, our opinion is rather clear. That is phasing to absolute uniformity and the phase-in period in order to get there is clearly within the compass of the uniformity provision.

The CHAIRMAN. Well, I think you are saying that in effect we could accomplish what this committee did last year, which was declare statehood immediately and have the phase-in, and that we would be permitted to do that on two bases: first, on the statehood clause, because that allows for a phase-in; and secondly, on the uniformity clause, because you do not have to be uniform where there is a rational basis for it.

Mr. GERSON. I agree with that, but as the Attorney General suggested, as far as uniformity goes incorporation is the trigger, so the deferral of statehood does not matter. We would prefer to see, if that were the option that were selected, that that be immediately triggered, because there is no reason to defer it.

The CHAIRMAN. I think this committee—nevertheless, I totally agree with you and I feel very vindicated in your opinion. But I think this committee is not likely to change that phase-in period, simply because of the comity that exists with the Finance Committee. The Finance Committee has heard the opinions and concluded otherwise, and they have jurisdiction, and I fear that trying to change that important provision, at least in committee, would be unwise and would be treading on their jurisdiction.

What we are doing in order to meet the July the 4th deadline, we cannot go back to all the committees of jurisdiction, because this is not self-implementing and it is not really necessary to go back to those committees of jurisdiction, since it is changing no laws, only allowing for a meaningful referendum.

Nevertheless, in order for that referendum to be meaningful, we ought to do it in a way that the Finance Committee is likely to approve in later legislation, and that has been what we have done here, and that is why I think we are not likely to change this.

Mr. GERSON. You are now speaking in an area of your expertise, where I have virtually none. The only thing that I would say is, we have made our comments, we have had these exchanges, and, while ultimately I am not a particularly large fan of courts interpreting legislative history, here legislative history might be very useful in terms of proponents and opponents of various measures understanding the effect, and so a fulsome record here that shows what the effect or non-effect of any particular language or provision is I think would be particularly helpful.

So, as I have on a couple of other occasions, I suggest again that the history of this, whatever becomes the operative final report or whatever attachments are made to it, include that, and then reasonable men and women or their representatives, advocates, can look at those materials and come to the right conclusions and make their choices for rational rather than wishful reasons.

The CHAIRMAN. In short, your problems with the draft are mainly technical, that you believe can be worked out?

Mr. GERSON. Most of them. Most of them certainly fit in that category. We have raised several objections of a constitutional nature, which are a little more difficult. But you are clearly right, the 35-some-odd pages of the point by point comments, an overwhelming majority of those are what I would describe as merely technical.

The CHAIRMAN. You have already volunteered to do this, but I would like to get you and this group to work with us next week, to go over the detailed comments and keep to our schedule, because we want to go to markup right after the recess. So we would like to make that schedule.

I want to thank you, Mr. Gerson, and all the members of your team. I also want to thank Chase Untermeyer, who has coordinated this for the White House. We have really had a good effort on the part of the administration this year. It augurs very well, I think, for this legislation, and I want to thank you very much for that.

Senator Wallop will have questions. He was at the White House this morning. He will have questions in writing, as will other members of the committee, and there will be other statements which we will put into the record when received.

So thank you very much, Mr. Gerson. Thank you, gentlemen.

[Whereupon, at 11:23 a.m., the hearing was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Office of the Assistant Attorney General Washington, D.C. 20530

February 22, 1991

Honorable Malcolm Wallop
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

This letter responds to the questions that you submitted in writing concerning the Department's analysis of S. 244, the "Puerto Rico Status Referendum Act," and to other concerns raised by the Committee in the February 7, 1991 hearings on this bill. The answers to these questions are set forth below along with the questions for ease of reference. Where an answer has been provided by another department, we have indicated that in the response.

Questions 1, 2, 6)

(1) If I understand your testimony correctly, we have a major problem with this legislation if we are serious and if Statehood were to obtain a majority. You state that there is no reason to delay Statehood because you believe that Congress has ample authority to make reasonable transition provisions after Statehood; and in any event the conjunction of Congress's explicit commitment to implement the winning status would, if Statehood were to be successful, constitute an "implied promise of eventual Statehood", to use the Court's language. That promise would lead to full application of the Constitution to Puerto Rico. Puerto Rico would become an "inchoate State" waiting only on the Congress to eventually pass an Admission Act. Your concern that the Committee make clear that the provisions of Title II are not binding only makes the problem more acute. The problem seems to me that on December 3 of this year, Puerto Rico may become incorporated and Congress would not only not have enacted transition provisions, but the legislation would not even have been introduced.

We seem to be left with two equally unpleasant choices. Either we enact the transition provisions now so the Courts have some guidance and do not immediately apply the Uniformity Clause or we completely disavow any intent to be bound by the results of the referendum in order to preserve Puerto Rico's unincorporated status. Would anyone like to address this problem?

(2) Would it be possible to reframe the legislation to express a commitment by the Congress to enact such legislation as may be necessary, *in the sole discretion of the Congress,* to prepare Puerto Rico for the preferred status while explicitly declaring Puerto Rico to remain unincorporated until such time as *Congress* declares the territory to be adequately prepared?

Would such a formulation be sufficient to prevent the Courts from finding an intent to incorporate and would the Administration support legislation which did not include an explicit commitment to honor the results of the referendum?

(6) On page 2 of your analysis, you suggest that Congress make clear that none of the provisions in any of the status titles should be viewed as binding. While Constitutionally correct, wouldn't such a statement encourage each of the political parties to point to the statement and simply say that with an overwhelming vote, Congress will see reason and change the provisions.

Answer: As noted in our February 7, 1991 Section-by-Section Comments (hereinafter "Comments") at 10-11, it is not clear under Supreme Court precedents whether Puerto Rico would become "incorporated" in such circumstances. As noted in our Comments at 4-6, Congress may not *legally* bind itself to take future action to implement the status option receiving a majority in the referendum. But the declaration of a "commitment" to make Puerto Rico a state if statehood receives a majority, even if not legally binding on Congress, in the absence of clarifying statements might nonetheless be taken as expressing a settled intention to "incorporate" Puerto Rico.

This possibility highlights the difficulties with the language of section 101(e)(2). As we recommended in our section-by-section comments, we believe that the language of section 101(e)(2) should be clarified to avoid any suggestion of a legal or even moral "commitment" to enact legislation to implement the status option receiving a majority in the referendum. *See* Comments at 4-6. In addition, section 101(e)(2) could be further modified explicitly to disclaim any intention to "incorporate" Puerto Rico until such time as legislation is enacted to implement the statehood choice. While not dispositive, *see* Comments at 10, such a statement would likely be sufficient to prevent the unintended incorporation of Puerto Rico. *See Balzac* v. *Puerto Rico*, 258 U.S. 298, 311-313 (1922).

To avoid the legal difficulty identified by Senator Wallop, section 101(e)(1) should be deleted and section 101(e)(2) should be changed to read as follows:

> It is the sense of Congress that appropriate legislation should be considered to implement the status option receiving a majority in the referendum. It is further the sense of Congress that the Chairman of the Senate Committee on Energy and Natural Resources and the Chairman of the House Committee on Interior and Insular Affairs should introduce the title of this Act corresponding to the status preference expressed in the referendum. Nothing in this section shall be construed to commit Congress to enact legislation implementing such a status. This Act shall not be deemed to incorporate Puerto Rico into the United States or in any way to alter Puerto Rico's present status as an unincorporated territory absent further legislation.

Question 3)

Assuming that the Administration is prepared to support full extension of all federal programs to Puerto Rico in a phased manner which is consistent with either Statehood or Independence so long as the extension is budget neutral, why haven't you submitted legislation to do that? Why doesn't it make sense for Congress to consider enacting such legislation as is necessary to provide state-like treatment, without incorporation or any other commitment to any status, prior to a referendum so as to prevent any incorporation problems?

Answer: The disparity that currently exists in the application of certain federal programs to Puerto Rico is a result of decisions made by previous Congresses and Administrations, which took into account the economic conditions in Puerto Rico at the time, among other factors. Prior to the consideration of S. 244 and related legislation in the 101st Congress, the need to address changes in federal law that would be necessary for a transition to statehood or independence had not arisen. Indeed, there was no reason to believe that crafting appropriate transition provisions for the status option chosen would prove to be as problematic as has been the case to date. Moreover, as a practical matter, both the House and Senate Committees having jurisdiction over the affected programs have shown no interest in revisiting the decisions creating the current special treatment for Puerto Rico. Consequently, even if the Administration had considered proposing alterations in the application of federal programs to Puerto Rico, it is unlikely these initiatives would have been enacted.

Question 4)

The Finance Committee proposed a formula to finance the extension of federal programs which would, in their view, be budget neutral. Budget neutrality is only one side of the problem. The other side is the impact on the economy of Puerto Rico and the ability of the government of Puerto Rico to provide essential services. There are several sources of potential revenues. We could look to tax transfer payments, such as the rum fund, or to exemptions such as the 936 credit. We could also simply raise revenues by extending the Internal Revenue Code to Puerto Rico. Even within those options we have alternatives. We could lower the allowable credit under 936 by a percentage, as Finance proposes, or we could change the program to a wage credit as Treasury has proposed in the past. Each of these alternatives and the various combinations of them will have different effects. Has anyone examined what mix is best and over what time frame to encourage development in Puerto Rico and reduce unemployment?

Answer: (Treasury Department) With respect to the Commonwealth option, the Senate Finance Committee's amendment was made prior to consideration of this bill by the Agriculture Committee. Due to the expenditures proposed by the Agriculture Committee, the Commonwealth option in the current bill is not budget neutral.

With respect to the Statehood option, the Finance Committee examined the competing factors involved in structuring a fair and reasonable transition to Statehood status. In its hearing on April 26, 1990, the Finance Committee received testimony from each of the Puerto Rican parties, the Treasury Department, and other federal agencies concerning the effects of such a transition on the Puerto Rican economy. Details of the Treasury Department's analysis of this issue are provided in the written statement submitted by Philip D. Morrison, International Tax Counsel.

The Administration accepts the tax transition included in the Finance Committee amendment as one that acceptably outlines the issues involved in a choice for statehood. Other options raised in this question present significant concerns which are avoided in the Finance Committee approach.

For example, changing the section 936 system to a wage credit would require a separate transition period in order to minimize dislocation within the Puerto Rican economy. As the Justice Department has testified, the time frame for that transition is limited by Constitutional constraints; it is doubtful that there would be sufficient time both to accomplish a transition to a wage credit and to remove all tax incentives within that time frame.

With respect to the extension of income taxes to Puerto Rico, the Finance Committee transition allows a phase-in of such taxes at the same rate that section 936 benefits are reduced. An important advantage to this approach is that it imposes comparable federal tax burdens on all corporations operating in Puerto Rico, regardless of whether they are incorporated on the mainland, on the island, or overseas.

Question 5)

Has the Administration taken a comprehensive look at the economy of Puerto Rico and the extent to which federal programs are helping or hurting development since the Department of Commerce review in the late 1970's?

How long would it take the Administration to formulate a transition schedule which balances both federal fiscal neutrality with full state-like treatment under all programs and laws with minimal impact on the Puerto Rico economy?

Answer: (Office of Management and Budget) No, we have not. However, the Administration would be pleased to work with Congress on appropriate transition arrangements.

Questions 7, 15)

(7) On page 4, you recommend that the reference to international law be deleted in the preamble. In the 1966 report of the U.S.-Puerto Rico Commission, the sixth conclusion was that "As a form of political status, each alternative [Commonwealth, Statehood, and Independence] confers equal dignity and equality of status." Do you concur in that conclusion and that the present federal relationship is valid? Would you also concur that any alterations in the application of federal laws to Puerto Rico under the current relationship and alterations to Independence or Statehood are matters of internal municipal concern solely, subject to the parameters of the U.S. Constitution?

(15) You express concern with the language in section 402. When Congress enacted the Federal Relations Act, both the Senate and House Reports explicitly stated that "[T]he bill under consideration would not change Puerto Rico's fundamental political, social, and economic relationship to the United States." Do you disagree with the definition contained in last year's legislation, S. 712?

Do you believe it is necessary or advisable to make explicit that Title IV would not alter the current Constitutional status of Puerto Rico and that Puerto Rico remains under the sovereignty of the United States and subject to the plenary authority of

Congress under Article IV as limited by those other provisions of the Constitution which now or hereafter apply to Puerto Rico?

Would you object to a sense of the Congress that no alteration in Puerto Rico's political status would be considered or enacted without the consent of the residents of Puerto Rico?

In addition to the right to vote for President or to have voting representation in Congress, what other rights are enjoyed by the citizens of the several States by virtue of the Constitution which are not enjoyed by citizens resident in Puerto Rico?

Answer: As a matter of law, Puerto Rico's present political status is that of an unincorporated territory of the United States, subject to the sovereignty of the United States and Congress' plenary governing power under the Territory Clause of the Constitution. U.S. Const. Art. IV, § 3, cl. 2. See Comments at 30-33. Congress has allowed the people of Puerto Rico to organize a local government pursuant to a constitution of its own adoption. This does not, however, alter the fact that Puerto Rico remains subject to Congress' plenary governing power under the Territory Clause.

In Harris v. Rosario, 446 U.S. 651 (1980) (per curiam), the Supreme Court explicitly noted that Puerto Rico is subject to Congress' power under the Territory Clause. Id. at 651-52. Rodriguez v. Popular Democratic Party, 457 U.S. 1 (1982) is not to the contrary. Rodriguez, in describing "the methods by which the people of Puerto Rico and their representatives have chosen to structure the Commonwealth's electoral system," id. at 8, remarked that "Puerto Rico, like a state is an autonomous political entity, sovereign over matters not ruled by the Constitution." Id. at 8 (original quotation marks and citations omitted). This remark in Rodriguez does not overrule or call into question the doctrine of Rosario. Rather, the remark in Rodriguez (and in the cases quoted and cited by Rodriguez) is properly understood as a description of the powers of local self-government Congress has allowed the people of Puerto Rico to exercise, within a system in which all matters concerning Puerto Rico ultimately are subject to the power of Congress under the Territory Clause of the Constitution. But it is a far cry from this description of the way Congress has chosen to exercise its plenary power over a territory under the sovereignty of the United States -- allowing a significant measure of local self-government on local matters -- to the assertion that Puerto Rico "enjoys sovereignty, like a State, to the extent provided by the Tenth Amendment." Section 402(a) (emphasis added). As indicated in our section-by-section comments, such a description is inconsistent with the Constitution. See Comments at 30-33. It is also misleading to suggest that principles of international law applicable to relationships between two sovereign entities are relevant to the relationship between the United States and Puerto Rico. See Comments at 4.

Whether the alternatives of commonwealth, statehood, and independence "confer[] equal dignity and equality of status" (question #7) is essentially the political judgment that the proposed referendum would permit the people of Puerto Rico to decide for themselves. It is certainly clear that the legal status and consequences of each relationship are different. Statehood is a permanent relationship in which residents of Puerto Rico would enjoy the same political, constitutional, and civil rights -- including voting representation in Congress and United States citizenship on a constitutional rather than statutory basis --, in exactly the same manner as citizens of the several states. Commonwealth is a relationship under which Puerto Rico remains an unincorporated territory under the sovereignty of the United States and subject to the plenary power of Congress under the Territory Clause, but under which residents of Puerto Rico are statutory United States citizens, enjoy many of the constitutional rights of citizens of the several states, and have been granted broad powers of self-government on local matters. The Supreme Court has held that "fundamental" constitutional rights apply to Puerto Rico, but has never set forth an exhaustive listing of which constitutional provisions are included in that category. However, the right to trial by jury is not applicable to Puerto Rico. Balzac v. Puerto Rico, 258 U.S. 298 (1922). Nor do Puerto Ricans enjoy fourteenth amendment protection of their U.S. citizenship status or the opportunity to vote in federal elections. Independence is a permanent relationship in which Puerto Rico would be a sovereign nation whose relationship with the United States would be determined by treaty or executive agreements between sovereign nations and by principles of international law, and under which residents of Puerto Rico would be expected to give up their United States citizenship for citizenship in the sovereign nation of Puerto Rico.

We believe that it is vitally important that any description of the several status options contained in the titles outlining proposed implementing legislation not be misleading. We think it particularly important in this regard to make clear the nature of the commonwealth relationship. As noted in our section-by-section comments, we believe the description contained in section 402 is seriously misleading and should be changed. Comments at 30-32. As noted in those comments, "[w]e consider it imperative that it be made clear beyond peradventure that the Commonwealth is and must remain under the sovereignty of the United States." Comments at 30-31.

We would have no objection to a sense of the Congress statement that no alteration in Puerto Rico's political status should be considered or encacted without the consent of the residents of Puerto Rico. (Question 14.)

Section 402 of S. 712, as reported by this committee in the 101st Congress, is generally less problematic than the present draft of section 402. That provision read:

> The Commonwealth of Puerto Rico is a self-governing body politic joined in political relationship with the United States and under the sovereignty of the United States. This relationship is permanent unless revoked by mutual consent.

The second sentence is in our view legally flawed, but could be rendered unobjectionable by being recast as a "sense of Congress" statement. (See Question #15) The first sentence is by and large accurate, but incomplete and potentially misleading in its formulation. It would be more accurate to note that Puerto Rico has been granted powers of self-government by the authority having sovereignty over it. The language as written could be taken as suggesting that Puerto Rico has inherent powers of self-government. We therefore recommend that, if a formulation like the provision in S. 712 is substituted for the present draft of section 402 in S. 244, that it be amended to read as follows:

> The Commonwealth of Puerto Rico is a body politic under the sovereignty of the United States, joined in political relationship with the United States, but not a State of the United States. The Commonwealth of Puerto Rico has been granted powers of local self-government by the Congress of the United States. It is the sense of Congress that this relationship should not be revoked except by mutual consent.

Question 8)

Under the Statehood option, you discuss Congress's ability to tailor transition provisions. To the extent that the Treasury analysis indicated a net revenue increase to the federal treasury, have you examined the possibility of using a portion of that increase to offset economic assistance to replace the loss of current tax provisions, such as a demonstration enterprise zone tied to a wage credit to replace section 936?

Should Congress look to the Statehood economic transition from the standpoint of neutrality, using any surplus to help develop Puerto Rico, or should we look to any surplus to offset the deficit?

Answer: (Treasury Department) The projections compiled by the Office of Management and Budget indicate that there would be a budget surplus under the Statehood option beginning in 1997 (assuming that option were ratified in 1992). For the years prior to statehood, the current bill provides substantial assistance to the government of Puerto Rico throughout the transition period. The Administration accepts the transition benefits proposed by the Finance Committee as an acceptable framework for a reasonable transition to statehood status. As discussed in response to question 4, it is doubtful that the limited time frame permitted for the statehood transition under the Constitution would allow for the imposition of a new set of tax incentives to replace section 936 during that transition period.

The issue of additional assistance to the new state after the transition would require a review of how the status change actually affected the Puerto Rican economy, as well as how federal transition benefits altered those results. If further federal assistance were appropriate, its form and scope would have to be judged in the context of the requirements of the U.S. and Puerto Rican governments at that stage. Moreover, any new incentives that might be considered at that time would have to conform to the restraints of the Constitution, and would raise issues of equitable treatment among the fifty-one states. Accordingly, it would not be appropriate for Congress to include commitments in the current bill regarding post-transition tax incentives for the new state of Puerto Rico.

Question 9)

S. 244 has altered the Defense provisions of Independence to delete the requirement that the U.S. retain unrestricted access and use of current base facilities and installations. Do you agree with that deletion?

Do you believe such a provision is essential?

Answer: The Department of Defense does not agree with the deletion of specific language on operating rights and status of forces that was in the original version of Section 312.

Under Title III, Section 312, "Defense," a task force established by the Joint Transition Commission would be required to "negotiate" several agreements, including one where the newly-independent nation of Puerto Rico would be legally committed to deny third countries access to or use of is territory for military purposes. DOD supports the inclusion of this caveat as a strategic imperative.

DOD would emphasize, however, that our national security and defense interests would be best protected by restoring the language on operating rights and status of forces that was in the original version of Section 312. Inclusion of this degree of specificity establishes a viable framework for subsequent negotiations should the "Independence" option to chosen. This has proven to be an effective procedure in past negotiations of a similar nature.

At a minimum, the legislative history of S. 244 should reflect that the Department and/or Congress anticipates that the negotiations for the use of military areas, as provided for in Section 312, will result in a continued use and unrestricted access to a certain required number of the present U.S. defense facilities in Puerto Rico. The Department does not believe it to be the intention of the Congress to relinquish our defense relationship with an independent Puerto Rico, and therefore, recommends that the Committee restore specific language to note such intent.

Under the provisions of Section 307 of the independence option, the President would, "withdraw and surrender all rights of possession, supervision, jurisdiction, control or sovereignty" over the territory of Puerto Rico.

Operations that are critical to the execution of U.S. regional counternarcotics efforts, as well as Atlantic fleet weapons and multi-carrier training operations, could be halted or otherwise affected during the transition period if we fail to secure in advance an agreement on operating rights and status of forces.

Hence, if it is not possible to restore the Section 312 of the previous version, we would like, at a minimum, to insert the phrase "for continued use and unrestricted access to current miliary areas by the United States" in the second sentence after "by the Government of Puerto Rico" and before "to deny third countries" of the new proposed Section 312. All such access agreements must, of course, include a status of forces agreement for U.S. personnel.

Questions 10 and 11)

(10) S. 244 also deletes the requirement that the base access and that strategic denial be permanently binding on the new Republic unless altered by mutual consent. Do you agree with that deletion?

(11) You object to the requirement that the President obtain Congressional approval prior to altering the strategic denial requirement. The Committee had a series of fairly exhaustive questioning on that precise limitation in the Micronesian Compacts. Both the Departments of Justice and State agreed in

open hearings that the language was binding on the President. Were those assurances to this Committee misleading?

Answer: As noted in our section-by-section comments, we believe that the power to terminate a treaty or executive agreement or otherwise alter the foreign policy of the United States with a foreign nation is a presidential prerogative under the Constitution. Congress may not by statute control or restrict the President's power in this regard. See Comments at 26-29. We recognize that some persons dispute the President's constitutional power in this regard. See generally Goldwater v. Carter, 444 U.S. 996 (1979) (declining to resolve issue of whether Senate has a role in treaty termination in litigation brought by United States Senator). We also recognize the existence of statutory arrangements predicated on this contrary view. Compact of Free Association Act of 1985, Pub. L. No. 99-239, § 101, 99 Stat. 1770, 1773 (1986), 48 U.S.C. § 1681 note (Micronesia and Marshall Islands). We question whether the statutory requirement with respect to Micronesia would be given effect by the courts were the President to seek to terminate such an agreement pursuant to his constitutional power in the area of foreign affairs. See Goldwater, 444 U.S. 996 (declining to resolve such an issue as nonjusticiable); Goldwater v. Carter, 617 F.2d 697 (D.C. Cir. 1979) (en banc), vacated and remanded with directions to dismiss the complaint, 444 U.S. 996 (1979) (power of treaty termination belongs to the President). In light of this conclusion, we think that any assurances made to committees considering the Micronesian Compacts should be understood as policy commitments by that administration to forbear the exercise of the President's constitutional power in that situation. Just as Congress cannot legally bind itself not to exercise constitutional powers within its authority at any point in the future, see Comments at 2-4, 32-34, one administration cannot agree to limit the constitutional powers of another. In any event, even if the limitation contained in the Micronesian Compact were to be honored, the President is not bound to agree to additional statutory encroachments on his constitutional power in the area of foreign affairs. We therefore adhere to our objection to inclusion of such a provision in this bill.

Question 12)

On page 22, you suggest that the Congress delegate to the President our plenary authority under Article IV and permit you to negotiate agreements unfettered by Congressional approval. Would it make more sense to treat Independence like the Micronesian negotiations -- that is, have you negotiate an Independence bill and submit that to Congress together with all necessary agreements so that we can decide whether to approve it or make alterations?

Answer: As noted in our section-by-section comments, there is a technical constitutional point concerning such negotiations that is best addressed by legislation authorizing the President to negotiate agreements. See Comments at 22. Simply put, before Puerto Rico becomes independent it remains a United States territory, subject to Congress' power under the Territory Clause. It is Congress that has power to direct upon what terms and conditions independence shall be granted, as part of its power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV., § 3, cl. 2. However, for such conditions to constitute commitments of Puerto Rico after it becomes an independent nation, they must also be in the nature of a treaty or executive agreement. Congress may not by statute create a treaty with a foreign nation, nor may Congress control the conduct of a foreign nation (even a prospective foreign nation that is presently a United States territory) by legislation.

We therefore have recommended that any such agreement be accomplished both by statute and by executive agreement. It is therefore useful for Congress to delegate to the President its authority under the Territory Clause to make a disposition of the property or territory of the United States, subject to Puerto Rico's agreement to certain conditions. The President would then be implementing Congress' directive pursuant to Congress' powers under the Territory Clause, and concluding an executive agreement that would take effect upon independence. This would assure that all constitutional requirements are satisfied. We do not mean to suggest that the Micronesian Compact is deficient in this regard. To the contrary, we have relied on the Micronesian situation as precedent for this type of arrangement. See Comments at 21-22. We simply believe that the procedure can be made even more clear.

Question 13)

Assuming Congress does not go to a self-implementing referendum, would one option to express our commitment to respect the results be to provide for the repeal of the Jones Act provisions on citizenship, effective on the certification of the referendum rather than waiting until formal legislation is enacted?

Answer: This question raises the possibility of repealing the Jones Act provisions on citizenship, effective on the certification of the referendum, rather than waiting until implementing legislation is enacted. We do not fully understand the purpose of this question. We do not understand how this would "express [Congress'] commitment to respect the results" of the referendum. We question whether it makes sense immediately to repeal the statutory United States citizenship of residents of Puerto Rico before implementing legislation is enacted, especially if statehood or commonwealth were selected. We do not understand what is to be gained by depriving Puerto Ricans of their U.S. citizenship for any interregnum between the referendum and implementing legislation -- legislation which might in any event not be passed. Moreover, we believe that such a proposal would give rise to serious concerns on the part of the people of Puerto Rico. If the purpose of this proposal is to pressure Congress to enact some form of legislation immediately after the referendum in order to avoid the highly disconcerting prospect of a cut-off of United States citizenship, we believe it would be ill-advised. We believe it is not a good idea for Congress to be deliberating on important status implementation legislation under such extreme pressure.

Question 14)

You suggest that residents of Puerto Rico be put to an election as to whether they wish to retain U.S. citizenship or acquire Puerto Rico citizenship and that such an election would be Constitutional. Could you provide the Committee with a detailed legal analysis on that subject as well as Congress's ability to alter statutory citizenship? I expect that the three parties in Puerto Rico will want to respond and the Committee should have all views on the subject.

Answer: The Department's views on this question are set forth on pages 23-26 of the enclosed section-by-section analysis which has also been submitted to the Committee.

Question 16)

On page 35, you suggest several problems with section 404 dealing with regulatory review. Both the Finance and Agriculture Committees have excluded all programs within their jurisdiction from the application of this section. Have agencies such as EPA or Interior expressed any concern, and if so, what is the Administration's position?

Do you believe you could defend an agency against a suit by the Governor that a regulation dealing with point source emissions did not adequately take into account the unique circumstances of Puerto Rico?

Answer: As stated in our testimony and the section-by-section analysis, the Administration supports the deletion of proposed section 404(c). The Administration's position has been coordinated with the Department of the Interior and the EPA.

We believe a challenge to an agency action under this section could be defended.

The Office of Management and Budget has advised this Department that it has no objection to the submission of this report to the Congress.

Sincerely,

W Lee Rawls

W. Lee Rawls
Assistant Attorney General

ESTADO LIBRE ASOCIADO DE PUERTO RICO

OFICINA DEL GOBERNADOR
LA FORTALEZA
SAN JUAN, PUERTO RICO 00901

February 18, 1991

The Honorable J. Bennett Johnston
Chairman
Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your February 8th letter, received on the 12th, I am hereby answering your additional written questions regarding S. 244, the Puerto Rico Status Referendum Act, for inclusion in the hearing record.

(1) COMMUNITY VALUES

Given the new legislation approved by the Congress, we feel that there is no need to include Section 411 on Community Values in the definition of a New Commonwealth relationship.

(2) PRINCIPLES OF COMMONWEALTH

You ask whether the language under section 402 of the bill changes the existing Commonwealth relationship, and if so how.

The proposed language under section 402 of the Commonwealth definition aims at clarifying, strengthening and expanding on the present relationship between Puerto Rico and the United States, without altering its essential elements of mutual consent, based on a compact, common citizenship, defense, market, and currency. Certain aspects of the relationship which have been defined by the Courts of the United States and Puerto Rico and understood by the United Nations, are not explicitly covered by the Federal Relations Act. Public Law 600 and the constitutional process which led to the establishment of Commonwealth, failed to address many concerns which we feel have become more important as the relationship has evolved. We thus seek to strengthen the pillars of the relationship while clarifying the inviolability of the U.S. citizenship of Puerto Ricans, the sphere of sovereignty enjoyed by the Commonwealth, the policy of the United States with regards to the Commonwealth of Puerto Rico, and several other aspects of the relationship which the bill explicitly covers.

The purpose of this language is to eliminate, to the greatest extent possible, any remaining doubts as to the non-colonial nature of Commonwealth status, and to assure that it will be a relationship blessed with the stability and permanence that the people of Puerto Rico and the United States mutually wish to bestow upon it.

The General Assembly of the United Nations, in its resolution 748 VIII of 1953,

> Recognizes that, in the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.

The federal courts, up to the U.S. Supreme Court, have repeatedly validated the understanding that the establishment of Commonwealth in 1952, ended Puerto Rico's territorial status, and subordination to the plenary territorial powers of Congress.

> "Puerto Rico, like a state, is an autonomous political entity, sovereign over matters not ruled by the Constitution." *Rodríguez v. Popular Democratic Party*, 457 U.S. 1 (1982)

> "Thus, in 1952, Puerto Rico ceased being a territory of the United States subject to the plenary power of Congress as provided in the Federal Constitution. The authority exercised by the federal government emanated thereafter from the compact itself." *United States v. Quiñones,* 758 F.2d 40 (1st Cir. 1985)

> "...the constitution of the Commonwealth is not just another Organic Act of the Congress. We find no reason to impute to the Congress the perpetration of such a monumental hoax. Public Law 600 offered to the people of Puerto Rico a compact under which, if the people accepted it, as they did, they were authorized to organize a government pursuant to a constitution of their own adoption...This constitution was adopted by the people of Puerto Rico through their duly chosen representatives in constitutional convention assembled. It stands as an expression of the will of the Puerto Rican people...(it) is not an act of Congress." *Figueroa v. People of Puerto Rico* , 232 F2d 615 (1st Cir. 1956).

While section 402 clarifies and strengthens the basic framework of the relationship, it also envisions an expansion in the scope of self-government enjoyed by Puerto Rico, consistent with a common citizenship, defense, currency and market. By setting a norm for the applicability and adaptability of federal laws to the Commonwealth of Puerto Rico we seek to harmonize the requirements of federal uniformity with the cultural, geographic, and economic peculiarities of our Island. Our aim is to enhance the policy tools available to Puerto Rico under Commonwealth in order to accelerate our economic development and bolster our self-sufficiency, in ways that are productive and constructive.

(3) HOUSE BILL

You ask whether I believe that the House bill meets the requirements of clear definitions and a commitment by Congress to implement the option chosen by the people of Puerto Rico.

H.R. 316, like its predecessor H.R. 4765, incorporates by reference general definitions of the status options available to the people of Puerto Rico. As to Commonwealth, the definition is conceptually correct, yet it is inadequate in that it lacks concreteness and specificity. However, these general definitions fail to address several crucial aspects of statehood and independence, that need to be defined before the plebiscite. They lack content and thus do not provide the people of Puerto Rico and the United States with an adequate, common understanding of the consequences of each option. I must note that the Senate definitions, although much more specific and detailed, fail to address the cultural consequences of statehood, as I pointed out in my testimony before the Senate Energy and Natural Resources Committee on January 30, 1991.

The House definitions further fail adequately to commit the U.S. government with the results of the referendum. This lack of commitment is compounded by the generality of the definitions. The emphasis of the House bill is with a procedural commitment to consider the results of the referendum, rather than with the substantive commitment that we seek.

The Senate bill S. 244 includes a substantive commitment in Title I, sec. 101 (e) (2): "enactment of this section constitutes a commitment by Congress to implement the status receiving a majority." This is less strong a commitment than what we would like, but it is acceptable. However, I must state categorically that any attempt at weakening this commitment, either by altering the language or by reducing the level of specificity in the definitions would defeat your stated objective of attaining the strongest possible moral and political commitment. Any such change would seriously compromise the value of this process to Puerto Rico and the United States. Again, it is the destination, not the journey, that we are after. Absent definitions or a commitment to implement the winning formula, federal legislation for a status referendum would be inconsequential and unnecessary. Since January, 1989, our central objective has consistently been a meaningful process: to define the options and commit the Congress to honor the referendum results.

(4) LEGAL EFFECT OF S. 244

Finally, you inquire whether I believe that the proposed enhancements to the Commonwealth, once effective, could be amended without mutual consent.

The process set out in S. 244 clearly bases any change in the status of Puerto Rico upon mutual consent. By providing for ratification by the People of Puerto Rico of the implementing legislation developed by the Congress after the referendum, the intention of Congress is clearly to base the enhancements of Commonwealth upon a solid and legitimate foundation of mutual consent.

The present Commonwealth relationship rests on a foundation of mutual consent, ratified by the Congress and the People of Puerto Rico as a compact. To be sure, I cannot conceive how any fundamental change in the relationship between Puerto Rico and the United States could be effected without the mutual consent of both Puerto Rico and the United States. If it were otherwise we could not support the legislation.

Sincerely,

Rafael Hernández Colón

cc: Committee on Energy and Natural Resources

PARTIDO INDEPENDENTISTA PUERTORRIQUEÑO

February 15, 1991

Senator Malcolm Wallop
Ranking Minority Member
Committee on Energy National Resources
U.S. Senate
Washington, D.C.

Dear Senator Wallop:

Thank you for your letter requesting our response to the position of the Administration, articulated by the Department of Justice in the Section-by-Section Comments on S.244, last February 5, 1991.

Most of the Comments concerning Title III are of a technical nature, which our staff has been instructed to discuss with your staff in the following days. However, I should like to respond directly to the Justice Department's discussion of Section 311 of S.244 regarding citizenship. Our position on this matter is contained in Professor José Julián Alvarez's article, *The Empire Strikes Out: Congressional Ruminations on the Citizenship of Puerto Ricans*, 27 Harvard Journal Legislation 309 (1990).

I respectfully request that this letter, as well as Professor Alvarez's article be included in the Record concerning this legislation, as expressing our position on the question of citizenship. I am of course willing to meet with you at your convenience to discuss this and other matters in greater detail.

Sincerely,

Rubén Berríos-Martínez
President

RBM/lmc

Committee Note.--The article of Professor Alvarez has been retained in committee files.

AVENIDA ROOSEVELT 963 • PUERTO NUEVO, PUERTO RICO 00920-9990

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

FEB 20 1991

The Honorable J. Bennett Johnston, Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are pleased to forward for the Committee's consideration the recommendations of this Department with respect to S. 244, the "Puerto Rico Status Referendum Act", as introduced in the Senate on January 23, 1991.

The United States Department of Agriculture (USDA) would support enactment of S. 244 with the modifications noted below.

We support the Committee's efforts to enact legislation which will give the people of Puerto Rico perhaps their first definitive opportunity to determine their own political status. And we believe there is great merit in publicly reviewing the potential consequences of each of the options from among which they will have the opportunity to choose. We offer these comments in the hope that they will contribute to the efforts of the Committee insofar as possible to shape the contemplated federal implementing legislation before any plebiscite on future political status is held.

We have just a few concerns which we would offer for the Committee's consideration. Our principal concerns include: [1] the substantial increases in cost of the Nutrition Assistance/Food Stamp Program under the Commonwealth option; [2] the possible loss under the Statehood and Independence options of (a) the USDA Agricultural Research Service tropical agriculture research station at Mayaguez and (b) approximately $ 1.5 billion in properties and security interests acquired by USDA under the loan and loan guarantee programs administered through the Farmers Home Administration and Rural Electrification Administration; and [3] the loss under the Independence option of the Forest Service Institute of Tropical Forestry whose tropical forestry research (including international global climate protection research) cannot be replicated elsewhere in the United States. To address these, and several less significant matters, we have enclosed suggested amendments designed to assist in perfecting S. 244.

OVERVIEW

Apart from two brief introductory sections, S. 244 consists of four titles. Title I would require, and establish ground rules for, a referendum in which the voters of Puerto Rico would have the opportunity to vote either for independence or to remain a part of the United States of America as a state or commonwealth. Titles II (Statehood), III (Independence), and IV (Commonwealth) are in the nature of separate implementing legislation. After the initial referendum provided for in Title I, the title of S. 244 which corresponds to the political status chosen by the Puerto Rican electorate (i.e. Title II-Statehood, Title III-Independence, or Title IV-Commonwealth) would be introduced and considered by Congress. It is this implementing legislation which would have practical impact upon the programs of USDA. Each of the implementing titles of S. 244 would affect USDA programs. However, in many cases the changes are modest and could be accommodated within presently forecast budget levels. S. 244 is described in this report only in sufficient detail to make our concerns intelligible.

TITLE I

Outline

Title I consists of a single section (§ 101) which would provide for a referendum in Puerto Rico on December 2, 1991, or such earlier date during the autumn of 1991 as may be agreed upon by the three principal political parties of Puerto Rico. The voters would be offered a choice among three political status options - independence, statehood, or commonwealth (with federal benefits beyond those presently available - formerly referred to as "enhanced commonwealth"). If none of these options were to draw a majority of the votes cast, a run-off referendum would be held within 30 days between the two political status options which received the greatest number of votes. In the run-off referendum, voters would be afforded the additional option of rejecting both of the surviving status options (thus presumably retaining the status quo).

If the referendum were to result in a majority for one of the three status options (presumably the three options provided by the first referendum) the chairmen of the Senate Committee on Energy and Natural Resources and of the House Committee on Interior and Insular Affairs would be required to introduce, as implementing legislation, the title of S. 244 which corresponds to the political status option chosen by the people of Puerto Rico. S. 244 provides that enactment of title I "constitutes a commitment by Congress to implement the status receiving a majority" (presumably in accordance with the terms of the title of S. 244 which corresponds to the political status chosen). Implementing legislation enacted by Congress and approved by the

President would be subject to ratification by the people of Puerto Rico in yet another referendum.

TITLE II - STATEHOOD

Outline

Title II of S. 244 consists of fifteen sections (§§ 201-215). If the federal legislation implementing statehood were ratified by the people of Puerto Rico, the President would be required to issue a proclamation announcing that fact (§ 201(a)). Within 60 days after such ratification, the President would be required to appoint a seven member Commission on Federal Laws to report to the Congress by January 1, 1994 (with interim reports as appropriate) those federal laws which should, and those which should not, be applicable to the new State (§ 208(b)). The heads of all federal agencies would be required, as a priority matter, to review their programs, in consultation with the Governor of Puerto Rico, and to recommend to the President and to the Commission on Federal Laws those changes, if any, needed in order to achieve proper application of Federal laws in the new State (§ 213(a)).

Puerto Rico would become a State on January 1st of the fifth calendar year following the year in which the voters of Puerto Rico ratify the federal legislation implementing their decision to become a State (§ 201(b)). [E.g., if ratification were to occur during 1992, Puerto Rico would become a State on January 1, 1997]. Election of Senators and Congressmen (the number to which Puerto Rico would be entitled under the 1990 census) would be held in the Fall of the immediately preceding year (§§ 206 & 207).

Notwithstanding statehood, the United States would be explicitly entitled to keep any lands or other properties obtained pursuant to (A) Act of Congress, (B) Executive order, (C) proclamation of the President, or (D) proclamation of the Governor of the Commonwealth of Puerto Rico (§ 204(b)). In addition, the new State would pledge to recognize the rights and titles of the United States in any lands held by, or subject to the disposition of, the United States and not conveyed to Puerto Rico by this Act ["Act" presumably refers to Title II] (§ 205(a)). Not later than five years after Puerto Rico becomes a State, each federal agency having control of any land or property retained by the United States pursuant to § 204 of S. 244 would be required to submit to the President and to the Congress a report concerning the continued need for such land or property. If the President determined that any such land or property, or portion of/interest therein, were no longer needed by the Federal Government, it would be conveyed to the new State at no cost. The Caribbean National Forest would be specifically excluded from the President's authority to transfer property (§ 204(c)).

Puerto Rico currently receives a Nutrition Assistance Program (NAP) block grant in lieu of participation in the Food Stamp Program. In the last three full fiscal years immediately preceding Statehood, the amount which otherwise would be paid under the NAP block grant would be increased by $ 112,500,000, $ 250,000,000, and $ 337,500,000, respectively (§ 213(c)(1)). Beginning on the October 1st immediately preceding Statehood, the NAP block grant would terminate and Puerto Rico would participate (at reduced eligibility and benefit levels) in the Food Stamp Program under the Food Stamp Act of 1977 (§ 213(c)(2)).

As of the October 1st immediately preceding Statehood, section 19 of the Food Stamp Act would be amended to provide that, in any State (as defined in the Food Stamp Act) whose per capita income is below 50 percent of the national per capita income of the United States (presumably only Puerto Rico at the present time), [1] the State would be required to dispense benefits by electronic or other secure means; and [2] only those households whose income falls at or below 65% of the poverty line, as referenced in section 5(c)(1) of the Food Stamp Act, would be eligible to participate. The standard deduction and maximum excess shelter expense deduction used in determining benefits under the Food Stamp Program would, in any such state, be limited to 59% and 35% respectively of the standard deduction and maximum excess shelter expense deduction calculated for the mainland under section 5(e) of the Food Stamp Act of 1977 (§ 213(c)(3)). [For purposes of the food stamp program cost estimates given below we have assumed that the reference in S. 244 to the poverty line "as defined in section 5(c)(1) of such [the Food Stamp] Act" is to the poverty line for the 48 mainland states. However, as section 5(c)(1) of the Food Stamp Act of 1977 is susceptible to other interpretations, section 213(c)(3) of S. 244 should be amended to provide uneqivocally that the poverty line referenced in section 5(c)(1) of the Food Stamp Act is the poverty line for the 48 mainland states. For this reason, we urge that the Committee adopt USDA Amendment No. 10. We note also that Puerto Rico is not presently considered a State under the Food Stamp Act of 1977. This, too, can be rectified with a simple technical amendment to section 213(c) of the bill. We would urge that the Committee adopt USDA Amendment No. 12 in order to conform the Food Stamp Act to the change in political status contemplated under Title II of S. 244.]

Program Concerns

NAP/Food Stamp Program - If the people of Puerto Rico were to ratify federal legislation implementing statehood in calendar year 1992, the USDA Food and Nutrition Service estimates that under Title II of S. 244 the cost of the augmented NAP block grant would be $ 1.2035 billion in fiscal year 1994, $ 1.383

billion in fiscal year 1995, and $ 1.5015 billion in fiscal year 1996, respectively. These amounts represent increases of $ 112.5 million, $ 250 million, and $ 337.5 million, respectively, over the amounts which otherwise would be paid. Beginning in fiscal year 1997, Puerto Rico would participate in the food stamp program "on equal footing with any other State of the United States" (§ 213(c)(2)(A)). Based upon the "Thrifty food plan", as defined in section 3(o) of the Food Stamp Act of 1977, and the lack of specific provision in S. 244 for maximum allotments, the maximum allotments would be equal to those in the 48 contiguous States. Therefore, in each fiscal year the annual increase in benefit costs over the current services level would be $ 805 million in fiscal year 1997; $ 836 million in fiscal year 1998; $ 868 million in fiscal year 1999; $ 901 million in fiscal year 2000; and $ 936 million in fiscal year 2001.

We would also expect substantially higher costs for the Food Stamp Program in Puerto Rico under S. 244 because of the requirement that Puerto Rico dispense benefits by electronic or other secure means. We believe that any proposal which would require implementation in Puerto Rico of an electronic benefit transfer system should be carefully evaluated in order to determine whether, with the telecommunications facilities presently available on the Island, such a proposal would be cost effective.

We recognize that, under the Statehood option, citizens of Puerto Rico would be subject to federal income and excise taxes and that the benefits of section 936 would be phased out. We do not know what increase in federal revenues would be generated by these measures. But, viewed in isolation, the changes which S. 244 would make in the Nutrition Assistance/Food Stamp Program would not be revenue neutral.

Mayaquez Research Station - Section 204(b) of S. 244 provides that lands set aside for the use of the United States by (A) Act of Congress, (B) Executive Order, (C)proclamation of the President, or (D) proclamation of the Governor of the Commonwealth of Puerto Rico shall remain the property of the United States. In 1936 the Legislative Assembly of Puerto Rico set aside approximately 190 hectares near Mayaguez for use by USDA as a tropical agricultural research station. The interests of the United States in lands set aside for the use of the United States by Act of the Legislative Assembly of Puerto Rico would not appear to be safeguarded by section 204(b).

While section 205(a) of the bill would apparently oblige the Commonwealth of Puerto Rico to recognize federal rights in lands held by the United States and not conveyed to Puerto Rico by S. 244, it is not clear that the Mayaguez research station is not conveyed to Puerto Rico by this bill. Moreover, since section 204(b) makes explicit provision that the United States retain lands acquired in specific ways, and the specific ways enumerated do not include the way in which the Mayaguez research station was acquired, it is uncertain whether the rules of statutory construction [which favor specific over general provisions] would permit interpretation of the very general provisions of section 205(a) in such a way as to resolve the status of the research station in favor of the United States.

We recognize that, in recommending amendment of section 204(b) of the bill to include explicit protection for the Mayaguez research station, we subject the station to possible future transfer to Puerto Rico under section 204(c). However, we believe that retention of this research station is too important to leave to chance. And we believe that the President would be most unlikely to conclude that the facility is not needed because the climatic conditions and, therefore, the research conducted at Mayaguez cannot be duplicated elsewhere in the United States. We enclose, and urge that the Committee adopt USDA Amendment No. 1, which would include among the lands safeguarded by section 204(b) those set aside for the use of the United States by act of the Legislative Assembly of Puerto Rico.

FmHA/REA Assets - Section 204(c) of S. 244 would require each federal agency holding land or property in Puerto Rico, which is retained by the United States pursuant to section 204, to report unneeded property to the President, who would be empowered to transfer such property to Puerto Rico without reimbursement. In the case of USDA, this subsection would appear to apply to inventory property acquired by the Farmers Home Administration (FmHA) as the result of foreclosures, but might be interpreted to apply also to loans and security interests of FmHA, and the Rural Electrification Administration (REA). The aggregate value of FmHA and REA interests in Puerto Rico is estimated at $ 1.211 billion and $ .289 billion, respectively. The context of the bill does not suggest an intention that section 204(c) apply to such interests; and the Chairman's statement upon introduction of the bill makes clear that S. 244 is intended to be revenue neutral.

Accordingly, we would urge that the Committee adopt either USDA Amendment No. 2 or USDA Amendment No. 3. USDA Amendment No. 2 would exempt FmHA inventory property and United States loan, guarantee, grant, or subsidy programs of the type conducted by FmHA and REA from the requirement that agencies report (and the President transfer to Puerto Rico without reimbursement) unneeded property. This Amendment would further provide explicitly that all right, title and interest of the United States in any land, property, claim, debt, contract, or chose in action would remain extant and enforceable. USDA Amendment No. 3, an alternative to USDA Amendment No. 2, would require that Puerto Rico prepay any loan in accordance with its terms and purchase at fair market value any property interest transferred to Puerto Rico by the

President and that, until such time, all rights and interests of the United States arising from loans, guarantees, grants, or subsidy programs would remain extant and enforceable.

TITLE III - INDEPENDENCE

Outline

Title III consists of eighteen sections (§§ 301 - 318). Within nine months after ratification by the voters of Puerto Rico of the federal legislation implementing the independence option, S. 244 would require that delegates be elected and brought together in a Constitutional Convention to develop a constitution for the new Republic of Puerto Rico (§ 301). The new constitution would be subject to ratification by the people of Puerto Rico in a vote to be held within three months after its adoption by the Constitutional Convention (§ 303). Not more than six months after ratification of the new constitution, elections would be held for the officers of the new republic provided for in the new constitution (§ 304).

Thereafter, within one month after: [1] certification by the Governor of Puerto Rico of the newly-elected officers; and [2] approval by the Governments of the United States of America and the Republic of Puerto Rico of agreements with respect to military base rights and the continuation/phase-out of domestic federal benefit programs, the President of the United States would, by proclamation, surrender sovereignty over the Island to the Republic of Puerto Rico (§ 307). Thus, a period of years would likely elapse between ratification by the voters of Puerto Rico of the federal legislation implementing the independence option (e.g. Title III) and the actual proclamation of independence.

The laws of the United States applicable to the Commmonwealth of Puerto Rico immediately prior to the proclamation of independence would no longer apply in the new Republic of Puerto Rico (§ 308(a)(2)). The President and Constitutional Convention would appoint an equal number of members to a jointly-funded Joint Transition Commission which, with the cooperation (and reimbursable technical assistance) of U.S. Government agencies, would expedite the orderly transfer to the new Republic of all functions of the U.S. Government in Puerto Rico and recommend appropriate legislation to the appropriate officials of each Government (§ 305).

All property, rights, and interests which the United States may have acquired over Puerto Rico by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain [with the exception of such land and other property, rights, or interests as may have been sold or otherwise legally disposed of prior to the enactment of this Act (presumably referring to Title

III)] would vest in the Republic of Puerto Rico and be subject to the jurisdiction of the Constitutional Convention (§§ 301(e) and 308(a)(1)). The property rights of the United States and Puerto Rico would be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States would be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of Puerto Rico (§ 302(c)). The debts, liabilities, and obligations of the Commonwealth of Puerto Rico, its municipalities and instrumentalities, valid and outstanding upon the date of the proclamation of independence, would be assumed by the Republic of Puerto Rico (§ 318). U.S. Government guarantees to investors in the secondary market for loans (particularly mortgage loans) originating in Puerto Rico and outstanding upon proclamation of independence would be maintained until maturity of such loans (§ 317).

Specific arrangements for the continuation or phase-out of federal programs would be negotiated by a Task Force on Economic Assistance (established by the Joint Transition Commission) and ratified by the two Governments. All federal programs would continue to apply in Puerto Rico until the end of the fiscal year in which independence is proclaimed. The Comptroller General would determine the aggregate value of all federal grants, programs, and services provided in Puerto Rico during that fiscal year. In each fiscal year thereafter, through and including the ninth year following ratification by the Puerto Rican people of the federal implementing legislation (e.g. Title III), a grant in the amount determined by the Comptroller General would be paid to Puerto Rico (§ 313). [Thus, while the exact number of years is uncertain, the grant would be paid to Puerto Rico for less than nine fiscal years.]

Program concerns

FmHA/REA Assets - Section 308(a)(1) would vest in Puerto Rico all property acquired by the United States by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain. This might be interpreted to include inventory property acquired through FmHA foreclosures and loans and security interests of FmHA and REA. As noted above, the aggregate value of FmHA and REA interests is estimated at $ 1.211 billion and $ .289 billion, respectively. As in the case of Statehood, the context of the bill does not suggest an intention to reach these interests. Indeed, the guiding principle of revenue neutrality would suggest just the opposite. However, the bill is not clear; and failure to resolve the issue at this point could be extremely costly.

We would urge that the Committee adopt USDA Amendment No. 4. This Amendment would require that, within three years after proclamation of independence, Puerto Rico purchase all United

States property at fair market value and prepay in accordance with their terms all loans made or guaranteed in Puerto Rico by the United States. Until such purchase or prepayment, all right, title, and interest of the United States in land or property, claims, debts, contracts, loans, or choses in action would remain extant and enforceable. All outstanding REA loans in Puerto Rico were made to the Commonwealth or its municipalities or instrumentalities. Even if under section 318 of the bill the Republic of Puerto Rico would assume the debtors' responsibilities, the future economy of an independent Puerto Rico is difficult to forecast and the ability of the Republic to carry out financial obligations is uncertain. We believe the interests of the United States would be better served if these loans were to be prepaid by Puerto Rico upon ratification of federal legislation implementing the independence option.

Mayaguez Research Station - As noted above, section 308(a)(1) would vest in the new Republic of Puerto Rico all property acquired by the United States by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain. It is unclear whether transfer to USDA for agricultural research purposes by the Legislative Assembly of 190 hectares near Mayaguez qualifies as a "cession" within the meaning of the bill. We would urge that the Committee adopt USDA Amendment No. 5. This Amendment would clarify that the USDA retains the research station at Mayaguez, which was granted to USDA under Puerto Rican law, by specifically excepting lands transferred to the United States pursuant to a law enacted by the Legislature of Puerto Rico from the properties to be vested in Puerto Rico.

Institute of Tropical Forestry - Section 308(a)(1) would appear to vest in Puerto Rico the Caribbean National Forest, including the Forest Service Institute of Tropical Forestry. The Institute is a world-respected center of research and scientific training in tropical forestry. Much of the research is conducted in cooperation with other countries and applied in response to such multinational environmental ecosystem problems as reforestation of defoliated areas of the Southern hemisphere and associated phenomena such as global warming. The conditions of environment and climate in Puerto Rico are unique and unavailable elsewhere in the United States. While cooperation by Puerto Rican authorities has been good, we do not believe that the new Republic would have the resources to continue this vital research at the level demanded by the pressing problems upon which the Institute focuses.

We recognize that the portion of the Caribbean National Forest referred to locally as El Yunque holds profound cultural significance for the people of Puerto Rico and would support transfer to Puerto Rico of that portion of the Forest which is culturally significant. However, just as S. 244 makes explicit provision for the preservation of U.S. base rights in the national interest, we believe that S. 244 should protect the national interest in continuation of the research conducted at the Institute. Therefore, we would urge the Committee to adopt USDA Amendment No. 6. This Amendment would except the Forest Service Institute of Tropical Forestry and associated portions of the Caribbean National Forest from the transfer to Puerto Rico under section 308(a)(1) while assuring that El Yunque is returned to Puerto Rico. Under the Amendment, the Joint Transition Commission would recommend to the respective Governments the portion of the Caribbean National Forest which should remain in U.S. hands in order to permit the work of the Institute to continue.

Commodity Credit Corporation GSM 102/103 Export Credit Guarantees - Section 317(b) of S. 244 provides that guarantees provided by the U.S. Government to investors in the secondary market for existing loans (particularly mortgage loans) which originated in Puerto Rico would be maintained through maturity of such loans. The Commodity Credit Corporation (CCC) issues to U.S. exporters of agricultural commodities guarantees with respect to letters of credit issued by approved foreign banks. Such guarantees are not infrequently assigned to banks or other financial institutions in the United States. We believe that the sponsors of S. 244 clearly intend that CCC export credit guarantees in existence upon the effective date of Puerto Rico's independence be maintained until maturity of the obligations with respect to which they were issued. However, S. 244 provides specifically for maintenance of U.S. Government guarantees only for mortgages in the secondary market. In order to obviate any question, we believe that section 317 of S. 244 should also provide explicitly for the continuing validity of export credit guarantees issued by CCC. Accordingly, we would urge that the Committee adopt USDA Amendment No. 13. This amendment would clarify that such CCC guarantees would remain valid until maturity of the underlying obligations, notwithstanding the independence of Puerto Rico.

TITLE IV - COMMONWEALTH

Outline

Title IV consists of fifteen sections (§§ 401-415) and, except for those of its sections which provide otherwise, would apparently become effective upon ratification by the people of Puerto Rico of the federal implementing legislation (§ 401). The Commonwealth of Puerto Rico is described as having a unique juridical status, created as a compact between the people of Puerto Rico and the United States, under which Puerto Rico enjoys sovereignty, like a State, to the extent permitted by the Tenth Amendment to the United States Constitution but with autonomy consistent with its character, culture, and location (§ 402(a)). The policy of the United States is declared to be "to enhance the Commonwealth relationship enjoyed by the Commonwealth of Puerto

Rico and the United States to enable the people of Puerto Rico to accelerate their economic and social development, to attain maximum cultural autonomy, to seek fair treatment in Federal programs, and in matters of government to take into account local conditions in Puerto Rico"(§ 402(b)).

The Governor of Puerto Rico would be empowered to certify to the Congress resolutions of the Legislature of Puerto Rico that a federal law, or provision thereof, should no longer apply to Puerto Rico on the grounds that: [1] there is no overriding national interest in having such federal law applicable in the Commonwealth; and [2] such application does not serve the interests of the Puerto Rican people. Joint resolutions approving such recommendations by the government of Puerto Rico would be considered by the Congress under expedited procedures. Upon enactment of a joint resolution approving such a recommendation, the federal law or provision in issue would no longer apply in Puerto Rico. However, the bill would not permit use of this procedure with respect to several categories of federal laws, including laws within the jurisdiction of the Senate Committee on Agriculture, Nutrition and Forestry, laws within the jurisdiction of the Senate Committee on Finance, or laws which directly or indirectly establish grants and/or services to citizens of the United States as individuals (§ 403).

S. 244 would impose additional responsibilities upon all federal agencies which engage in rulemaking pursuant to title 5, United States Code, section 553. Such agencies would be required to be guided by the above-quoted policy of the United States toward Puerto Rico set forth in section 402(b) of the bill when carrying out their responsibilities under statutes and rules which apply to or affect Puerto Rico. The statement of basis and purpose which accompanies a final rule would have to include specific response to any data, views, or arguments adduced during the proceeding which raise a question of the consistency of the rule with the above-quoted policy. The Governor of Puerto Rico would have not less than 30 days after publication in the Federal Register of a final rule (other than a rule issued after notice and hearing required by statute), to submit to the authoring agency his determination that the rule is inconsistent with the policy of section 402(b).

The agency would be required to respond by publishing in the Federal Register within 45 days one of three possible determinations, to wit: (1) the agency has no discretion to make the rule inapplicable to Puerto Rico; (2) there is a national interest that the rule be applicable in Puerto Rico; or (3) that the rule is not consistent with the section 402(b) policy [whereupon the rule would be inapplicable to Puerto Rico or applicable only in the manner prescribed in the agency's response]. The Governor (and no other party) would have 60 days to seek judicial review of the agency's response in the United

States Court of Appeals for either the First Circuit or the District of Columbia Circuit. As with section 403 of S. 244, the authority conferred upon the Governor of Puerto Rico by this section would not extend to any rule issued pursuant to any federal law or provision within the jurisdiction of the Senate Committee on Agriculture, Nutrition and Forestry or the jurisdiction of the Senate Committee on Finance (§ 404).

The Congressional policy favoring consolidation of federal grants (other than direct payments to classes of individuals) to Insular areas [48 U.S.C 1469a] would be extended to Puerto Rico. However, no consolidation of such grants would be permitted with respect to any programs established or operated under the Social Security Act or the Food Stamp Act of 1977 (§ 407(a)). The NAP block grant/Food Stamp Program benefits provided under the commonwealth option would be essentially identical to those provided under the statehood option. Puerto Rico would revert from the NAP block grant to the Food Stamp Program effective with the fiscal year beginning on the October 1st immediately preceding January 1st of the fifth calendar year following the year in which Puerto Rican voters ratify the commonwealth option. In the last three full fiscal years immediately preceding such fiscal year, the amount which otherwise would be paid under the NAP block grant (currently paid to the Government of Puerto Rico in lieu of participation in the Food Stamp Program) would be increased by $ 112,500,000, $ 250,000,000, and $ 337,500,000, respectively (§ 407(b)(1)). Beginning on the October 1st immediately preceding January 1st of the fifth calendar year after the calendar year of ratification, the NAP block grant would terminate and Puerto Rico would participate (at reduced eligibility and benefit levels) in the Food Stamp Program under the Food Stamp Act of 1977 (§ 407(b)(2)).

As of the October 1st immediately preceding January 1st of the fifth calendar year after the year of ratification, section 19 of the Food Stamp Act would be amended to [1] require that Puerto Rico dispense benefits by electronic or other means designed to promote the integrity of the program; and [2] limit food stamp eligibility on the Island to those households whose income falls at or below 65% of the poverty line, as referenced in section 5(c)(1) of the Food Stamp Act. In Puerto Rico, the standard deduction and maximum excess shelter expense deduction used in determining benefits under the Food Stamp Program would be limited to 59% and 35% respectively of the standard deduction and maximum excess shelter expense deduction calculated for the mainland under section 5(e) of the Food Stamp Act of 1977 (§ 407(b)(3)). [For purposes of the Food Stamp Program cost estimates given below, we have assumed that the reference in S. 244 to the poverty line "as defined in section 5(c)(1) of such [the Food Stamp] Act" is to the poverty line for the 48 mainland states. However, section 5(c)(1) is susceptible to other interpretations. We urge that the Committee adopt USDA Amendment

No. 11, which would make clear that the poverty lined referred to in section 407(b)(3) of S. 244 is the poverty line for the 48 mainland states.]

The President, in connection with any advise and consent position in Puerto Rico, and the Secretary of Agriculture, in connection with appointment of the Supervisor of the Caribbean National Forest and the Director, Farmers Home Administration, would be required to consult with the Governor of Puerto Rico as to whether there are special circumstances or qualifications which should be considered in making the appointment (§ 408). An Office of Senate Liaison for the Commonwealth of Puerto Rico would be established in the United States Senate to be headed by an individual known as the "Puerto Rico Liaison". The incumbent would be appointed by, and serve at the pleasure of, the Governor of Puerto Rico (§ 409).

Program concerns

NAP/Food Stamp Program - If the people of Puerto Rico were to ratify federal legislation implementing commonwealth in calendar year 1992, the USDA Food and Nutrition Service estimates that under Title IV of S. 244 the cost of the augmented NAP block grant would be $ 1.2035 billion in fiscal year 1994, $ 1.383 billion in fiscal year 1995, and $ 1.5015 billion in fiscal year 1996. These amounts represent increases over the amount which otherwise would be paid to Puerto Rico of $ 112.5 million, $ 250 million, and $ 337.5 million, respectively. Beginning in fiscal year 1997, Puerto Rico would participate in the food stamp program "on equal footing with any other State of the United States except as provided in section 19 of [the Food Stamp] Act" (§ 407(b)(2)(A)). Based upon the "Thrifty food plan", as defined in section 3(o) of the Food Stamp Act of 1977, and the lack of specific provision in S. 244 for maximum allotments, the maximum allotments in Puerto Rico would be equal to those in the 48 contiguous States. Therefore, the annual increase in benefit costs over the current services level would be $ 805 million in fiscal year 1997; $ 836 million in fiscal year 1998; $ 868 million in fiscal year 1999; $ 901 million in fiscal year 2000; and $ 936 million in fiscal year 2001.

We would also expect the costs of the Food Stamp Program to be substantially higher under S. 244 due to the requirement that Puerto Rico dispense benefits by electronic or other secure means. We believe that any proposal which would require implementation in Puerto Rico of an electronic benefit transfer system should be carefully evaluated in order to determine whether, with the telecommunications facilities presently available on the Island, such a proposal would be cost effective.

As presently written, S. 244 would appear to favor the Commonwealth option. We do not believe that this is consistent with the sponsor's intention to provide the contending factions in Puerto Rico with a level playing field. And we doubt seriously that this is what the President had in mind when he expressed support for the concept of a referendum in which the people of Puerto Rico could determine their future relationship with the United States.

Accordingly, we would urge that the Committee adopt USDA Amendment No. 7. This amendment would delete from S. 244 section 407(b) and that portion of section 407(a) which would preclude consolidation of the NAP block grant with other federal grants to Puerto Rico. The amendment would have the effect of preserving the present NAP program in Puerto Rico until the Committees of jurisdiction, in cooperation with the Administration, determine that change is warranted. While in the face of demonstrated need we would support annual adjustment of the NAP block grant to take account of changes in the Puerto Rican economy, we believe that it is as important today as it was in 1982 to tailor this nutrition program to the cost of living and other conditions actually experienced in Puerto Rico and to permit the Government of Puerto Rico to provide for its citizens in the manner it deems best calculated to serve their interests. By and large this strategy has worked as Congress intended and should not be altered for reasons unrelated to the Nutrition Assistance Program's basic purpose.

Finally we note as we did above in our discussion of the Statehood option, viewed in isolation, the changes which S. 244 would make in the Nutrition Assistance/Food Stamp Program would not be revenue neutral.

Subversion of Agency Rulemaking - While arguably innocuous because inapplicable to most of this Department's programs and in large measure duplicative of Administrative Procedure Act provisions, we recommend deletion of section 404 from S. 244. That section would require federal rulemaking agencies to give special deference to the concerns of Puerto Rico and to reopen just-completed rulemaking proceedings at the instance of the Governor of Puerto Rico notwithstanding the potential for harm to other parties to the proceeding or to the public which could result from delay in effectiveness or discriminatory application of the final rule.

The Administrative Procedure Act already requires federal agencies to consider all data, views, and arguments submitted in each rulemaking proceeding and to incorporate in any rules adopted a concise general statement of their basis and purpose, which would have to take into account any considerations peculiar to application of the rule to Puerto Rico. Federal agencies are further required to give interested persons the opportunity to petition for the issuance, amendment or repeal of a rule. However, section 404 would grant to the Governor of the Commonwealth of Puerto Rico an unprecedented and capricious power not available to the Governor of any State to require the reopening of a federal rulemaking proceeding just completed whether or not he participated in the rulemaking proceeding and irrespective of the rights of other parties and the public. While we defer to the Department of Justice with respect to additional legal concerns raised by section 404, we urge that the Committee adopt USDA Amendment No. 8, which would delete this section from S. 244.

Consultation on Federal Appointments - We understand that the Department of Justice has alerted the Committee to the Constitutional implications of attempting to impose limits, beyond those of Senate advice and consent, upon the President's apppointment power. We question, too, the wisdom of establishing as a precedent the subjection of appointments by cabinet officials to a formal requirement of prior consultation with the Governor of the locality in which the official's office is located. While to the extent material to effective performance, local conditions would likely be one of many factors to be considered in making an appointment, we believe that it should not be paramount.

With the precedent this bill would establish, it takes but little imagination to predict the insistence of the Governors of the fifty States upon treatment at least equal to that of the territory of Puerto Rico. In addition, though principally officed in one place, federal officials' responsibilities frequently extend beyond the boundaries of a single State. This precedent could lead to a requirement for consultation with the Governors of surrounding states for which such an official may also be responsible. We believe that the potential for mischief implicit in this section of S. 244 far outweighs its value as an accommodation to the Commonwealth of Puerto Rico. Therefore, we recommend that the Committee adopt USDA Amendment No. 9, which would delete from S. 244 section 408.

We appreciate this opportunity to comment on S. 244 and stand ready to assist the Committee staff in perfecting any amendments needed to accommodate the concerns we have outlined.

Sincerely,

Clayton Yeutter

Clayton Yeutter
Secretary

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed amendment No. 1 to S. 244, as introduced in the Senate

I. Statement of the issue:

Section 204(b) provides that lands set aside for the use of the United States by Act of Congress, Executive Order, proclamation of the President, or proclamation of the Governor of the Commonwealth of Puerto Rico shall remain the property of the United States. In 1936, the Legislative Assembly of Puerto Rico set aside approximately 190 hectares near Mayaguez for use by USDA as a tropical agricultural research station. Such a transfer of property does not appear to fall within the coverage of section 204(b).

Section 205(a) provides, in general terms, that Puerto Rico will recognize all United States "rights and titles to any lands or other property not granted or conferred to the Commonwealth" under the provisions of the bill.

Since section 204(b) makes specific provision for the United States to retain lands acquired in particular ways, which would not include the research station at Mayaguez, it is uncertain whether the general rules of statutory construction would permit the general provisions of section 205(a) to resolve the status of the research station in favor of the United States. Accordingly, this amendment would clarify that USDA retains the agricultural research station at Mayaguez which was granted to USDA under Puerto Rican law.

II. Proposed amendment to S. 244:

Page 8, line 22, delete "or (D)" and insert in lieu thereof "(D) law enacted by the legislature of Puerto Rico, or (E)".

III. Description of the proposed amendment:

The proposed amendment would expand the language of section 204(b) to provide also that any lands and other properties that have been set aside for the use of the United States under any law enacted by the legislature of Puerto Rico shall remain the property of the United States.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 2 to S. 244, as introduced in the Senate

I. Statement of the Issue:

Section 204 (c) would require each federal agency holding land or property to report unneeded property to the President, who would be empowered to transfer such property to Puerto Rico. In the case of USDA, this subsection would appear to apply to inventory property acquired by the Farmers Home Administration (FmHA) as the result of foreclosures, but might be interpreted to apply also to loans and security interests of (FmHA) and the Rural Electrification Administration (REA). The aggregate value of FmHA and REA interests in Puerto Rico is estimated at $ 1.5 billion. The context of the bill does not suggest an intention to reach such interests as FmHA or REA loans or security interests or FmHA inventory property. And the sponsor's statement upon introduction makes clear that one of the guiding principles behind S. 244 is that the bill be revenue neutral.

II. Proposed Amendment to S. 244:

Page 9, line 7, immediately before the period, insert: "Provided, that the foregoing shall not apply to any land, interest in land, property, or interest in property which was obtained or arose pursuant to any loan, guarantee, grant, or subsidy program of the United States".

Page 9, immediately following line 13, insert the following new subsection:

"(d) All right, title and interest in any land or any property, and all claims, debts, contract rights or choses in action arising under or pursuant to any loan, guarantee, grant or subsidy program of the United States, shall remain extant and enforceable according to their terms.".

III. Description of the Proposed Amendment:

This amendment would exempt FmHA inventory property and United States loan, guarantee, grant, or subsidy programs of the type conducted by FmHA and REA from the requirement that agencies report (and the President transfer to Puerto Rico) unneeded property. It would further provide explicitly that all right, title and interest of the United States in any land, property, claim, debt, contract or chose in action shall remain extant and enforceable.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 3 to S. 244, as introduced in the Senate

I. Statement of the Issue:

Should the Congress determine not to exempt Farmers Home Administration (FmHA) inventory property and loans and security interests of FmHA and the Rural Electrification Administration (REA) from the operation of section 204(c), the President would be empowered to transfer such interests to Puerto Rico without further involvement on the part of the Congress and without compensation. The aggregate value of FmHA and REA interests in Puerto Rico is estimated at $ 1.5 billion. However, the Chairman's statement upon introduction of the bill makes clear that one of the guiding principles behind S. 244 is that it be revenue neutral.

II. Proposed Amendment to S. 244:

Page 9, immediately following line 13, insert the following new subsection and redesignate succeeding subsection(s) accordingly:

"(d) the Commonwealth of Puerto Rico shall prepay any loan in accordance with its terms and purchase at fair market value any other property or interest in property transferred by the President pursuant to this section. All right, title and interest in any land or any property, and all claims, debts, contract rights, or choses in action arising under or pursuant to any loan, guarantee, grant or subsidy program of the United States, shall remain extant and enforceable according to their terms until prepaid or purchased by the Commonwealth of Puerto Rico."

III. Description of the Proposed Amendment:

This alternative amendment would require that Puerto Rico prepay any loan in accordance with its terms and purchase at fair market value any property interest transferred to Puerto Rico by the President and that, until such time, all rights and interests of the United States arising from loans, guarantees, grants or subsidy programs would remain extant and enforceable.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 4 to S. 244, as introduced in the Senate

Section 308(a) (1) would vest in Puerto Rico all property acquired by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain. This might be interpreted to include the inventory property of the Farmers Home Administration (FmHA and loans and security interests of FmHA and the Rural Electrification Administration (REA). The aggregate value of FmHa and REA interests in Puerto Rico is estimated at $ 1.5 billion. However, the context of the bill does not suggest an intention to reach such interests; and the Chairman's statement upon introduction of the bill makes clear that one of the guiding principles behind S. 244 is that it be revenue neutral.

II. Proposed Amendment to S 244:

Page 48, immediately following line 5, insert the following new paragraph (2) and renumber succeeding paragraphs accordingly:

"(2) The Republic of Puerto Rico shall, within three years from the date of independence, prepay in accordance with their terms all loans made or guaranteed by the United States to Puerto Rico or any instrumentality or agency thereof or to any resident of Puerto Rico or secured by any interest in real property located in Puerto Rico. The Republic of Puerto Rico shall, within three years from the date of independence, purchase all property of the United States located in Puerto Rico and not otherwise provided for in this legislation at its then fair market value. All right, title and interest in any land or any property, and all claims, debts, contract rights or choses in action, arising under or pursuant to any loan, guarantee, grant or subsidy program of the United States shall remain extant and enforceable according to their terms until prepaid or purchased by the Republic of Puerto Rico."

III. Description of the Proposed Amendment:

This amendment would require that within three years of the date of independence. Puerto Rico purchase at fair market value all United States property and prepay in accordance with their terms all loans made or guaranteed by the United States in Puerto Rico. Until such purchase or prepayment all right title and interest of the United States in land or property, claims, debts, contracts, loans, or choses in action would remain extant and enforceable.

UNITED STATES dEPARTMENT OF AGRICULTURE

Proposed amendment No. 5 to S. 244, as introduced in the Senate

I. Statement of the Issue:

Section 308(a)(1) would vest in Puerto Rico all property acquired by the United States by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain. it is unclear whether transfer to Usda for agricultural research purposes of 190 hectares near Mayaguez by the Legislative Assembly of Puerto Rico qualifies as a "cession" within the meaning of the bill.

II. Proposed Amendment to S. 244:

Page 48 line 3, immediately following "may have been" insert "granted or otherwise transferred to the United States pursuant to law enacted by the Legislature of Puerto Rico prior to the enactment of this Act, and with the further exception of such land and other property, rights, or interests as may have been".

III. Description of the proposed amendment:

This amendment would clarify that the USDA retains the research station at Mayaguez, which was granted to USDA under Puerto Rican law, by specifically excepting lands transferred to the United States pursuant to a law enacted by the Legislature of Puerto Rico from the properties to be vested in Puerto Rico.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed amendment No. 6 to S. 244, as introduced in the Senate

I. Statement of the Issue:

Section 308(a)(1) would vest in Puerto Rico all property acquired by the United States by virtue of the Treaty of Paris of 1898, and thereafter by cession, purchase, or eminent domain. The lands thus revested in Puerto Rico would include the Caribbean National Forest, including the U.S. Forest Service Institute of Tropical Forestry. While USDA supports return to Puerto Rico of that portion of the National Forest known as El Yunque, which has great cultural significance for the people of Puerto Rico, it is doubtful that Puerto Rico would have the resources to continue the internationally important research and scientific training conducted at the Institute.

II. Proposed amendment to S. 244:

Page 48, line 5, immediately before the semicolon, insert ":Provided, however, that the Institute of Tropical Forestry and associated portions of the Caribbean National Forest shall be reserved for the use of the United States pursuant to agreement negotiated by a task force established by the Joint Transition Commission which shall be approved in accordance with the constitutional processes of the United Sates and Puerto Rico and come into effect simultaneously with the proclamation of independence.".

III. Description of the proposed amendment:

This amendment would reserve for the use of the United States the Institute of Tropical Forestry and associated portions of the Caribbean National Forest in accordance with a Government to Government agreement to be negotiated between, and approved by, the Governments of Puerto Rico and the United States prior to the proclamation of independence.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed amendment No. 7 to S. 244, as introduced in the Senate

I. Statement of the Issue:

Section 407 would prohibit consolidation of the Nutrition Assistance Program block grant with other such grants to Puerto Rico and extend to Puerto Rico under the Commonwealth option all the Food Stamp Program benefits available under the Statehood option. This would undermine a fundamental purpose of the referendum provided for in Title I of S. 244, which is to present to the people of Puerto Rico a clear choice between the rights and privileges of Statehood versus the relative autonomy enjoyed under Commmonwealth status.

II. Proposed amendment to S. 244:

Page 79, line 17, delete "or the Food Stamp Act of 1977"; and

Page 79, delete line 18 down through and including page 83, line 6.

III. Description of the proposed amendment:

This amendment would permit the consolidation of the Nutrition Assistance Program block grant with other grants to Puerto Rico and delete the provisions of the bill which would extend to Puerto Rico under the Commonwealth option benefits identical to those available under the Statehood option, thus preserving the integrity of the choice to be extended to the people of Puerto Rico in the referendum to be conducted pursuant to Title I.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed amendment No. 8 to S. 244, as introduced in the Senate.

I. Statement of the Issue:

Section 404 would ostensibly require federal agencies engaged in rulemaking (except those within the jurisdiction of the Senate Committee on Agriculture and the Senate Finance Committee) to give special deference to the concerns of the Commonwealth of Puerto Rico and empower the Governor of Puerto Rico, notwithstanding his participation or opportunity to participate in a rulemaking proceeding resulting in the issuance of a final rule, to reopen federal rulemaking proceedings just completed with a simple assertion that the final rule produced is inconsistent with the policy of the United States toward Puerto Rico articulated in section 402(b) of S. 244. Thus the Governor would be armed with a filibuster or delaying tactic not available to the Governors of the several states which could wreak havoc in the context of proceedings considering rules with applicablity beyond the Island of Puerto Rico.

II. Proposed amendment to S. 244:

Page 76, delete line 4 and all that follows down through and including page 78, line 12, and renumber sections 405 through 415 as sections 404 through 414, respectively.

III. Description of the proposed amendment:

The proposed amendment would delete section 404 of S. 244. The Administrative Procedure Act (APA) already requires federal agencies to include in any final rule a concise statement of the basis and purpose of the rule, which would have to take account of any special circumstances peculiar to Puerto Rico. The APA also grants to anyone the right to petition for the issuance or change of a rule. Therefore, the Governor of Puerto Rico already possesses the opportunity intended to be conferred by section 404. It would be capricious, to say the least, to grant but one party who has full opportunity to have his perspective considered in the rulemaking proceeding the absolute right to reopen the proceeding to the possible detriment of the rest of the United States.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed amendment No. 9 to S. 244, as introduced in the Senate.

Statement of the Issue:

Section 408 of S. 244 would require the President to consult the Governor of the Commonwealth of Puerto Rico with respect to appointment to any federal position in Puerto Rico which requires the advice and consent of the Senate. This section would also require several cabinet officers to likewise consult the Governor in connection with appointments to eight federal positions located in Puerto Rico, including the Supervisor of the Caribbean National Forest and the Director, Farmers Home Administration. We believe that this would place an impermissible constraint upon the prerogatives of the President and create a most undesirable precedent with respect to other federal appointments.

II. Proposed amendment to S. 244:

Page 83, delete line 7 and all that follows down through and including page 84, line 7, and renumber sections 409 through 415 as sections 408 through 414, respectively.

III. Description of the proposed amendment:

This amendment would delete from S. 244 section 408 which, insofar as it applies to the President, is of doubtful validity and, insofar as it applies to other positions, would establish a precedent likely to be quickly followed and potentially harmful to the public interest which requires that federal officials execute their responsibilities with an eye to the common good and free from political duress.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 10 to S. 244, as introduced in the Senate.

I. Statement of the Issue:

Section 213(c)(3) would amend the Food Stamp Act of 1977 to provide that in any State whose per capita income is below 50 percent of the national per capita income of the United States, only those households whose income falls at or below 65% of the "poverty line", as that term is used in section 5(c)(1) of the Food Stamp Act of 1977, would be eligible to participate in the Food Stamp Program in Puerto Rico. Section 5(c)(1) of the Food Stamp Act of 1977 provides for different poverty lines for the 48 mainland States and District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands. In order to be able properly to evaluate the cost and other implications of these amendments to the Food Stamp Act of 1977, S. 244 must be amended to specify which of the poverty lines provided for in section 5(c)(1) is intended. We assume that the poverty line for the 48 contiguous States and the District of Columbia was intended. This would be consistent with the provisions of the bill which would fix the standard deduction and maximum excess shelter expense deduction for Puerto Rico at percentages of those deductions as determined for the 48 contiguous States and the District of Columbia.

II. Proposed Amendment to S. 244:

Page 27, lines 12 and 13, delete "poverty line" and insert in lieu thereof "poverty line for the 48 contiguous States and the District of Columbia".

III. Description of the Proposed Amendment:

This amendment would clarify that the "poverty line" used to determine eligibility for participation in the Food Stamp Program would be the poverty line determined for the 48 contiguous States and the District of Columbia.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 11 to S. 244, as introduced in the Senate.

I. Statement of the Issue:

Section 407(b)(3) would amend the Food Stamp Act of 1977 to provide that only those households whose income falls at or below 65% of the "poverty line", as that term is used in section 5(c)(1) of the Food Stamp Act of 1977, would be eligible to participate in the Food Stamp Program in Puerto Rico. Section 5(c)(1) provides for different poverty lines for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands. In order to be able properly to evaluate the cost and other implications of the changes which S. 244 would make in the Food Stamp Program, the bill must be amended to specify which of the poverty lines provided for in section 5(c)(1) is intended. We assume that the poverty line for the 48 contiguous States and the District of Columbia was intended. This would be consistent with the provisions of the bill which would fix the standard deduction and maximum excess shelter expense deduction for Puerto Rico at percentages of those deductions as determined for the 48 contiguous States and the District of Columbia.

II. Proposed Amendment to S. 244:

Page 81, line 24, delete "poverty line" and insert in lieu thereof "poverty line for the 48 contiguous States and the District of Columbia".

III. Description of the Proposed Amendment:

This amendment would clarify that the poverty line used to determine eligibility for participation in the Food Stamp Program in Puerto Rico would be the poverty line determined for the 48 contiguous States and the District of Columbia.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 12 to S. 244, as introduced in the Senate.

I. Statement of the Issue:

While Title II of S. 244 would extend to the Commonwealth of Puerto Rico the benefits of Statehood, S. 244 would make none of the technical amendments to the Food Stamp Act of 1977 which would be required to properly integrate the changes in the Food Stamp Program required by the bill into the Food Stamp Act itself. Anticipating that there may be further changes as this legislation moves forward, we have not yet prepared the technical amendments to the Food Stamp Act of 1977 which would be required. However, as the Commonwealth of Puerto Rico is not presently defined as a "State" in the Food Stamp Act, and pending refinement of S. 244 by the Congress of contemplated changes in the Food Stamp Program, we believe that it would be appropriate to make this amendment to the Food Stamp Act in recognition that title II of S. 244 would change the political status of Puerto Rico to that of a State.

II. Proposed Amendment to S. 244:

Page 28, immediately following line 8, insert the following new subsection:

> "(c) For purposes of this Act, the term 'State' shall include the Commonwealth of Puerto Rico; and reference to the term 'fifty States' shall be deemed a reference to the fifty States and the Commonwealth of Puerto Rico.".

III. Description of the Proposed Amendment:

This amendment would clarify that, beginning on the first day of the October immediately prior to January 1st of the year Puerto Rico is declared admitted to the Union, Puerto Rico would be deemed a "State" and one of the "fifty States" for purposes of the Food Stamp Program.

UNITED STATES DEPARTMENT OF AGRICULTURE

Proposed Amendment No. 13 to S. 244, as introduced in the Senate.

I. Statement of the Issue:

Upon proclamation of independence, a question would arise as to the effect of Puerto Rico's new political status as a republic upon guarantees provided by the Government of the United States under a variety of federal programs. Section 317(b) of S. 244 makes explicit provision for the continued validity of such guarantees to investors in the secondary market for existing loans, particularly mortgage loans, and provides that such guarantees shall be maintained until maturity for existing loans which originated in Puerto Rico prior to independence. However, S. 244 fails to provide similar protection for guarantees of credit by the Commodity Credit Corporation (CCC) in connection with export of agricultural commodities. Upon proclamation of independence, exporters and financial institutions in Puerto Rico would no longer qualify for such guarantees. Under the federal regulations applicable to the GSM export credit guarantee programs (7 C.F.R. Part 1493), the original beneficiary of such a CCC export credit guarantee is a U.S. exporter. Such exporters may assign the proceeds payable by CCC under the guarantee or the rights thereto to a bank or other financing institution in the United States (7 C.F.R. § 1493.11). CCC guarantees issued in connection with these programs are commonly issued for a period of three years from the date of export. Under the GSM-103 program, such guarantees may be effective for ten years from the date of export. We urge that section 317(b) of S. 244 be amended to provide that the CCC guarantee provided under these programs be maintained until maturity of the obligations with respect to which they were issued.

IV. Proposed Amendent to S. 244:

Page 69, line 18, immediately following "(b)" insert "(1)";

Page 70, line 2, delete the period and insert in lieu thereof "; and";

Page 70, immediately following line 2, insert the following new paragraph:

> "(2) Export credit guarantees issued by the Commodity Credit Corporation to Puerto Rico exporters or assigned to otherwise eligible Puerto Rico financial institutions shall be maintained until maturity of the obligations with respect to which such guarantees were issued.".

IV. Description of the Proposed Amendment:

This amendment would clarify that, notwithstanding the change in political status of Puerto Rico, export credit guarantees previously issued or assigned, respectively, to exporters or financial institutions in Puerto Rico would remain in effect for the life of the underlying obligations with respect to which such guarantees were issued.

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

FEB _6 1991

The Honorable J. Bennett Johnston
Chairman, Committee on Energy
and National Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for a report on S. 244, a bill "To provide for a referendum on the political status of Puerto Rico."

In summary, the Department supports enactment of Puerto Rico status legislation but recommends consideration of certain modifications we believe would help achieve the primary objectives of the bill in an equitable and efficient manner.

The bill would provide a referendum in Puerto Rico on the Commonwealth's future political status. Three status options are provided: statehood, independence, and Commonwealth. The bill also includes the text of legislation that would be introduced in Congress to implement the particular status option chosen by the people of Puerto Rico in the referendum. Each of the three status options would change the administration of HHS programs in Puerto Rico.

The statehood option has no significant effect on most of the Department's programs inasmuch as Puerto Rico already participates in these programs on the same basis as states. However, the transition to statehood would make significant changes in certain HHS entitlement programs, i.e., Supplemental Security Income (SSI), Aid to Families with Dependent Children (AFDC), Medicaid, and Foster Care and Adoption Assistance. With the exception of provisions relating to the SSI, the statehood provisions provide for an equitable and feasible transition and would not cause any difficulties for HHS program administration.

We have two concerns with the SSI provisions. First, the bill would cap the income limitations and benefit rates of the Supplemental Security Income program for beneficiaries in all states at 50% (individuals) and 75% (couples) of a state's per capita income. The cap is likely to affect SSI benefits in the Northern Marianas, if it is made applicable there. Congress may want to consider how to address this.

Second, there are two standard means by which the Secretary of Commerce determines state per capita income. The benefit cap was intended to avoid affecting benefits in any other state, but if the lower Commerce per capita measure were used it might cause a reduction in the benefit rate in one or more states. The bill should specify which of the two measure will be used in implementing this provision.

The independence option would end the Department's responsibilities for administering programs in Puerto Rico, with the exception of Social Security and Medicare. Task forces on Social Security and Medicare will address the complex arrangements needed to coordinate these latter programs with analogous programs to be established by an independent Puerto Rico. The coordination of these programs in a manner that protects the interests of current and future beneficiaries will be complicated and time consuming and can only be satisfactorily addressed through examination and negotiations by a mechanism such as the commission and the task forces that would be established under the proposed bill.

The Commonwealth option would remove the current caps on Medicaid and AFDC, increase Puerto Rico's share of the Social Services Block Grant and allow consolidated funding under certain HHS grant programs. The consolidation authority that would apply to Puerto Rico under the Commonwealth option is currently applicable to other U.S. insular areas. The Department has experience with the authority and it would present no significant administrative problems. However, the bill should allow consolidation of the Social Services Block Grant, which would otherwise be excluded as a Social Security Act program.

We are advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Louis W. Sullivan

Louis W. Sullivan, M.D.
Secretary

United States Department of State

Washington, D.C. 20520

February 11, 1991

UNCLASSIFIED
MEMORANDUM

SUBJECT: Puerto Rico: S. 244: Additional State Department Comments

The Department wishes to supplement its comments on S.244 by noting its opposition to §403(d) of the bill, which is found in Title IV (regarding the enhanced commonwealth option). It provides as follows:

> The Governor of Puerto Rico may enter into international agreements to promote the international interests of Puerto Rico as authorized by the President of the United States and consistent with the laws and international obligations of the United States.

This provision is identical in language and section number to a precursor bill -- S.712 --which was under consideration by the Senate in 1989. In testimony of July 11, 1989 before the Senate Committee on Energy and Natural Resources, the Department of State's witness noted the Department's objection to that provision on the grounds that allowing a sub-entity of the United States to pursue its own foreign policy and international agreements derogates from the foreign relations power of the President and inescapably raises constitutional and political issues. (See testimony of Principal Deputy Legal Adviser Mary V. Mochary).

Following that testimony, the Department further explained its position in response to a Committee question submitted for the record. The Department stated:

> Puerto Rico has no formal role in the formulation of U.S. foreign policy. As you know, the scope and responsibility for U.S. foreign policy formulation is described and regulated by Article II of the Constitution. In practice, the Federal Government consults with Puerto Rico on foreign relations matters which touch Puerto Rican interests, such as, for example, international trade and transportation agreements. Although Puerto Rico has, from time to time, entered into arrangements with certain foreign countries in the areas of cultural and sports exchanges, the State Department does not regard these activities as representing a "role" in the process of making and implementing foreign policy.

The foregoing views on the former §403(d) continue to represent the Department's views on that section of S.244. We therefore reiterate our opposition to §403(d) and urge its deletion from the bill. It is possible that the drafters of §403(d) may have believed that constitutional and political issues could be avoided by using the phrase "as authorized by the President of the United States and consistent with the laws and international obligations of the United States", as a limitation on the Puerto Rican Governor's authority. However, such a limitation on the Governor's authority would not remove the fundamental constitutional and political conflicts that would be created by implementing §403(d). For instance, in the event of Puerto Rico's breach of or non-compliance with any obligations undertaken in an agreement concluded pursuant to §403(d), would the United States Government be held accountable for such breach or non-compliance by the foreign government in question? How could the U.S.G. ensure that implementation of any such agreement was consistent with U.S. foreign policy at any given point in time?

An additional reason for deleting such a provision is because it would be deceiving. As drafted, it implies that the Governor of Puerto Rico could expect presidential authorization for a significant number of agreements that Puerto Rico deems important to its "international interests." In reality, except for narrow arrangements such as cultural and sports exchanges, many proposed agreements that Puerto Rico would submit to the President for approval are likely to be disallowed for the very constitutional and political reasons underlying the Department's overall objection to §403(d). Thus, this provision would likely institutionalize conflict between the U.S.G. and Puerto Rico.

Recommendation: Delete §403(d) entirely.

DEPUTY UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20506
202-395-5114

1991 FEB -8 AM 9:07

FEB 5 1991

The Honorable J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity of presenting our views on S. 244, the "Puerto Rico Status Referendum Act."

We have examined the definitions of the three options contained in the bill to identify implications for U.S. trade policy. We do not comment on the overall merits of any of the particular options.

We had the opportunity of expressing our views on S. 712 before the Senate Committee on Energy and Natural Resources on July 13, 1989, and of submitting a statement on a draft dated July 21, 1989. We also testified before the Senate Committee on Finance on November 15, 1989. The current version of the bill satisfactorily addresses most of the concerns we indicated in those statements.

The only major remaining difficulty from a trade policy perspective is the treatment of coffee. Since 1930, Puerto Rico has been allowed to maintain its own tariff regime on coffee, despite the fact that Puerto Rico is in the Customs territory of the United States. Using special Congressionally provided authority, Puerto Rico charges a duty on all coffee imports, including from the United States. The U.S. tariff on coffee is zero, a rate which is bound under the rules of the General Agreement on Tariffs and Trade.

Section 215 of S. 244 would repeal Puerto Rico's ability to impose a tariff if it becomes a State. We support this provision as a policy matter.

Strictly as a policy matter, we believe Puerto Rico should not be permitted to continue to levy a tariff on coffee even under Commonwealth status. If it is decided that the coffee tariff ought to be retained in some form, we could support keeping it only for an appropriate transitional period, during which time it would be phased down to zero -- the level of the U.S. tariff on coffee.

The Honorable J. Bennett Johnston
Page Two

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Julius L. Katz

JLK:isa

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

February 25, 1991

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington D.C. 20510-6150

Dear Mr. Chairman:

This is to provide you with HUD's views on S. 244, the "Puerto Rico Status Referendum Act," which you introduced on January 23.

This bill would provide for holding an island-wide referendum in Puerto Rico in which qualified voters would be presented with a choice of three status options for Puerto Rico: Statehood, Independence, or Commonwealth status.

This Department has reviewed this bill, and has the following four recommendations.

1. Section 317(b)

Section 317(b) would require the maintenance until maturity of guarantees by instrumentalities of the United States Government (such as GNMA, FNMA, and FHLMC) to investors in the secondary mortgage market for Puerto Rico-originated notes existing on the date of the proclamation of Independence. FHA has outstanding certain contracts of mortgage insurance and coinsurance involving approved mortgagees and participants who either reside in Puerto Rico or are foreign persons who have invested in insured Puerto Rican mortgages. The Department recommends that the assurances of Section 317(b) be expanded to include contracts of mortgage insurance and coinsurance entered into by the Department under the National Housing Act.

2. Section 204(c)

Section 204(c) of Title II, which deals with Statehood, would empower the President to convey real property declared excess by Federal agencies to Puerto Rico at no cost. HUD acquires title to residential properties and mortgage interests in Puerto Rico as the result of its mortgage insurance and direct loan programs. While HUD property disposition procedures are exempt from the Federal Property and Administrative Services Act of 1949, under 40 U.S.C. Sec. 474(11), each title and mortgage is acquired by HUD at a cost to the applicable insurance fund.

In order to maintain the solvency of the public insurance funds, should the voters of Puerto Rico choose Independence, it will be necessary for HUD to be able to liquidate its property interests on the island over a period of time for a fair return to the insurance funds. While the Department has not discovered a specific section in the bill other than Section 204(c) which relates to this problem, the Department understands that should the voters choose the Independence option, the U.S. and Puerto Rico would negotiate treaties before Independence is finalized. HUD suggests that conditions be inserted into one or more of these executive agreements (1) assuring the integrity of the fee and mortgage interests owned by HUD after Independence becomes effective, and (2) permitting HUD to liquidate its property interests on the island in an orderly manner and for a fair return which could be repatriated to the mainland over a reasonable period of time.

3. Section 310(a)

Title III, Section 310(a), which deals with State Succession if Independence is chosen, is ambiguous when it recites that "the Government of the Republic of Puerto Rico shall be deemed successor to the Government of the Commonwealth of Puerto Rico and of all the rights and obligations thereof." For example, it is not clear from the quoted language that the Republic of Puerto Rico, should the voters choose Independence, would be obliged to recognize the property rights of HUD.

As a result of its mortgage insurance operations, HUD acquires defaulted mortgages on property in Puerto Rico in exchange for insurance benefits. Should the voters choose Independence, it might be useful for the United States and Puerto Rico to negotiate a treaty which would recognize the right of HUD to foreclose mortgages on properties in Puerto Rican courts, to own property in Puerto Rico, and to sell such parcels after acquisition of title.

4. HUD Subsidy Programs

S. 244 should be designed to minimize or, if possible, avoid entirely any post-Independence operation of U.S. domestic subsidy programs in a sovereign foreign State.

Housing subsidy programs under Section 2 of United States Housing Act of 1937 ("1937 Act") are clearly provided for domestic operation in the United States, to promote the general welfare of the "nation," and to assist the "States and their political subdivisions." For this purpose, the term "State" is statutorily defined in Section 3(b)(7) to include the "Commonwealth of Puerto Rico." This definition would not, therefore, include post-Independence Puerto Rico.
Section 308(a)(2) of Title III of S. 244 would provide generally

that U.S. law applicable to the Commonwealth prior to the proclamation of Independence would no longer apply in the Republic of Puerto Rico.

Under both S. 244 and the 1937 Act, HUD could not enter into any new or discretionary Section 8 or public housing funding commitments in Puerto Rico after Independence. The situation respecting operation of existing funding contracts is more complex and problematic.

Section 313(b)(4) of S. 244 would provide that the United States "will fulfill any contractual obligations outstanding" at Independence. This raises the following issues which this Department suggests should be the subject of negotiations prior to the grant of Independence.

At the time of Independence, HUD may have outstanding subsidy contracts reaching long past Independence, including contractual undertakings for subsidy payments. For example, there might be an outstanding Section 8 Housing Assistance Payments Contract obligating payments for a 20-year period, or a public housing Annual Contributions Contract based on a 40-year Federal interest. Continued post-Independence contract administration and enforcement by HUD or other U.S. domestic agencies in a foreign State would be anomalous and difficult, and certainly offensive to Puerto Rican sensibilities (the Puerto Ricans having, by hypothesis, elected Independence in the statutory referendum under S. 244). Section 309(3) of S. 244 would explicitly provide that the U.S. judicial power does not extend to post-Independence Puerto Rico. It is not clear how such post-Independence contracts would be administered or enforced.

There seems to be a built-in statutory conflict between the Section 313(b)(4) obligation of S. 244 to carry out "any" outstanding contractual obligations and the provisions that Puerto Rico may "request" that the United States "continue any existing contractual obligations" under Section 313(b)(4). The latter provision implies that the United States may decline to continue existing contractual obligations. What also would be the relationship between a duty (or election) to continue contractual obligations, which is presumably open ended -- i.e., extending the length of any outstanding contracts, whatever the term -- and the provision for compensating grants to Puerto Rico only through the ninth year after Independence in Section 313(b)(3)?

Questions concerning the effects of Independence on the great host of existing U.S. domestic subsidy programs will be complex and difficult. So far as possible, responsibility for the administration of outstanding subsidy contracts should be transferred to the Republic of Puerto Rico, together with funding to cushion assumption of this obligation.

Thank you for your consideration of HUD's views on this matter.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Very sincerely yours,

Frank Keating

PUERTORRIQUEÑOS EN ACCION CIUDADANA
PUERTORICANS IN CIVIC ACTION
P O BOX 3225 • MAYAGUEZ, PUERTO RICO 00709
TEL (809) 834-0726

Miriam J. Ramírez de Ferrer MD
President

INTRODUCTION

Puerto Ricans in Civic Action is a non partisan organization which has delivered 350,000 individually signed petitions for statehood for Puerto Rico to the Congress of the United States. We are committed to help Puerto Rico become a state of the Union and to achieve a true process of self determination for our people. The 350,000 petitions were mentioned as an important factor in the 1987 introduction of bills by Sen.Robert Dole and Rep.Robert Lagomarsino to provide for a referendum in Puerto Rico.

Our sincere commitment to this cause has given us great credibility. We played an important role in the strong show of support from the people of Puerto Rico in favor of Senator Johnston's position on having true definitions in the bill. At the time, all three political parties and their leaders were calling on their constituents to do otherwise.

Individuals such as President George Bush, Sen.Benett Johnston, Sen.James McClure, Rep.Robert Lagomarsino and others, have undertaken this historical responsibility with their fellow American citizens. History will recognize and pay homage to their patriotic commitment to the principles that embody our Nation.

Although we are moving in a highly politicized arena and there are partisan interests not only in Puerto Rico but in Congress, the issue of self determination for 3.5 million US citizens cannot be approached as a partisan political question. Years from now, those who have only self serving purposes in mind will be censured by future generations.

We submit the following observations on S.244 and request that these be considered very seriously:

1. TIMETABLE:...pg.2
Deadlines must not result in a plebiscite bill based on false premises.

2. PARTICIPATION:..pg.2
What Congress must do if one of the parties boycotts the process.

3. IMPLEMENTING THE PROCESS:.................................pg.2
What the bill must include to assure a fair process.

4. THE PROBLEM WITH THE DEFINITIONS:..........................pg.3
The serious problems with the definitions.

5. THE SOLUTION TO THE PROBLEM ON DEFINITIONS:..................pg.3-4
The perfect solution to break the impasse in the House and Senate.

6. THE RESULTS OF THE PLEBISCITE:...............................pg.4
This vote IS FINAL AND DEFINITE for the people of Puerto Rico.

1.THE TIMETABLE...

We, the people of Puerto Rico, are not in such a hurry to move this process that we are willing to accept promised status options based on false premises. We have waited almost 100 years and we can wait a few more months to assure a good plebiscite bill.

The urge for expediency must not dominate over the conscientious enactment of a referendum based on the common application of constitutional principles. During the urgent legislative priority, please utilize your righteousness, wisdom, common sense, and historical responsibility on behalf of your fellow 3.6 million Americans.

2.PARTICIPATION...

From the beginning of this process we have voiced our concern on Congress' decision to work with only three leaders from the three political parties of Puerto Rico. This decision has made the process of self determination of 3.6 million U.S. citizens, a political contest between these three leaders and their parties, whose political future depends on who wins the plebiscite. When any of these individuals think they can lose, they obstruct the process. This is very unfair to the people of Puerto Rico since it conditions the celebration of a plebiscite on the whims of these party leaders.

The three present political parties represented in the process, the Popular Party, the New Progressive Party, and the small Independence Party are only three of many political parties that have existed in Puerto Rico since we became part of the United States.

In view of the role played by the United States in self determination events which take center stage in the World, and in view of the attention that the International Community keeps over how the United States handles this issue with its own people, we strongly urge that Congress take the necessary steps to **HOLD THE PLEBISCITE, REGARDLESS IF ANY POLITICAL LEADER OR PARTY OBSTRUCTS THE PROCESS OR DECIDES TO BOYCOTT IT. THE PEOPLE WANT A PLEBISCITE; IT IS THE CONSTITUTIONAL RIGHT AND RESPONSIBILITY OF THE CONGRESS TO PROVIDE ONE.**

3.IMPLEMENTING THE PROCESS...

To guarantee a fair process, any bill must include:

a) Freezing the Puerto Rico electoral law as of June 1989,(as in S.712). This will prevent voter qualification fraud.
b) Federal jurisdiction over the plebiscite,(as in S.712).This will control electoral fraud.
c) Federal Voter Education program. (As in S.712) To educate voters and control disinformation.
d) Include the participation of qualified civic organizations as contemplated in the P.R. electoral law. This will neutralize the partisan effect.

4.THE PROBLEM WITH THE DEFINITIONS:

There are marked differences between the Senate and the House Bill. These differences seem irreconcilable. The main problem is the definitions of each status. The House says it will not accept a Senate bill with extensive and onerous details and the Senate rejects a House bill with ambiguous definitions, which promised status options based on false premises. However, the new Senate bill now has many of the same problems.

1. **The House Bill:** Although it has no definitions, the accompanying house report contains a misleading wish list submitted by each party. This will deceive the voters in Puerto Rico on what they will be able to negotiate for each status. This wish list has already been used extensively by the Commonwealth party for false propaganda.

2. **The Senate Bill:** Since removing the self-implementing clause, some of the same deceptive political parties wish list items have been included in the new definitions which are unacceptable to the principles of the United States and its Constitution.

We particularly insist that the definitions of a Commonwealth relationship be clarified as follows:

- It will continue to be under the territorial clause and the U.S.Constitution will only apply in part.
- It will not be a tenth amendment state of the Union.
- It will be under the sovereignty of the United States.
- The people will have statutory citizenship of the United States
- It will not have the power to make treaties
- It will not decide which Federal Laws apply to its US citizens
- It will not be guaranteed permanence of Section 936.
- It will not be guaranteed full participation in Federal Programs

5. THE SOLUTION TO THE PROBLEM WITH DEFINITIONS:

Since the proposed Senate bill is not self implementing and the economic details will be negotiated by the winning option, economic details should be eliminated from the language of the bill. Eliminating these will make the bill more acceptable to the House.

ANY BILL PASSED BY CONGRESS MUST INCLUDE IN ITS LANGUAGE, KEY CONTROLLING ITEMS THAT THE UNITED STATES CANNOT NEGOTIATE WITH ANYONE, NO MATTER WHO WINS ! THE BILL SHOULD CLEARLY DEFINE HOW EACH OF THE FOLLOWING ITEMS APPLIES UNDER EACH STATUS OPTION.......

A.SOVEREIGNTY:

The United States is the sovereign power, not a co-sovereign. Commonwealth relationship is under the sovereignty of the United States.

B.U.S.CONSTITUTION:

The Constitution can apply in part or full only to areas "under the sovereignty of the United States". The Territorial Clause cannot be made inapplicable to Puerto Rico except through statehood or independence. Congress cannot permanently negate its constitutional powers over a territory or possession.

C.CITIZENSHIP:
Full US citizenship rights and benefits are available only to those in a U.S. state or an incorporated area,i.e. an area in which the Constitution fully applies. Full and equal citizenship rights and benefits cannot be guaranteed under a commonwealth relationship in which the U.S.Constitution does not apply. US Citizenship may be accorded to those born in a U.S. flag area under the sovereignty of the United States. A commonwealth relationship NOT under the sovereignty of the US will NOT automatically endow U.S. citizenship.

A FIRM AND ASSERTIVE POSITION BY THE UNITED STATES ON HOW THESE ITEMS APPLY TO EACH STATUS AND SPECIFIED CLEARLY IN THE PLEBISCITE BILL WILL ASSURE THE PEOPLE OF PUERTO RICO A FAIR AND HONEST PROCESS.THIS IS REALLY THE KIND OF INFORMATION THAT THE U.S.CITIZENS IN PUERTO RICO NEED TO KNOW WHEN VOTING IN A PLEBISCITE !

6.THE RESULTS OF THE PLEBISCITE...

Even though the bills discussed in both House and Senate are not self-implementing, the result of the plebiscite is potentially final and definite for all practical purposes. While all the status options may not meet internationally recognized final status, for this current voting generation in Puerto Rico, this will in all probability be the only vote on status.

There are no provisions in the bill to have another vote in the event that the negotiations are not acceptable to Congress or the people. After waiting almost one hundred years, it is a one shot deal for us. If this vote is based on false premises and potentially deceitful definitions, there are no provisions for turning back .

There should be no runoff permitted since it would create an artificial majority, and for the self determination process to be meaningful and truly honest, one of those three options should be able to attain a simple majority.As the political status debate in Puerto Rico continues to be divisive, a true simple majority will resolve the debate.

Since 1968, no party in Puerto Rico has received more than 48% of the votes in an election. The people of Puerto Rico are predominantly individuals who believe in a permanent union with the United States, who treasure their U.S. citizenship and protection under the U.S.Constitution, and who wish to participate fully in the American system.

Since over 90% of the voters claim to desire permanent union with the United States, under the guise of one status or another, if no simple majority is received during the referendum,-then a vote should be held on the incorporation of Puerto Rico into the United States.

Our proposal will make the bill acceptable to both the House and Senate and will result in a fair and honest process for the people.

We also request to have included for the record, the detailed comments on S.244 prepared by our legal advisors as well as an economic study done by a group of highly reputed economic experts.This will dispel the erroneous myth promoted by certain anti statehood interests groups that statehood is not a good deal for the United States.

Jarabo: Dec. 2 plebiscite would be premature

By **HAROLD J. LIDIN**
Of The STAR Staff

House Speaker José Jarabo, alarmed by what he sees as a premature plebiscite date proposed in congressional legislation, said Saturday that the time available for plebiscite campaigning is "totally inadequate."

Despite his misgivings about the pending plebiscite legislation, which proposes a Dec. 2 vote, Jarabo urged continued pro-plebiscite action. Moreover, he said it's possible that the status legislation, as eventually approved, will set a date in 1993 or 1994 for the referendum.

* The Popular Democratic Party leader, despite his concerns over the date and content of the plebiscite, said the plebiscite discussion already has benefitted Puerto Rico. He cited clarification that U.S. citizenship is irrevocable, that commonwealth is a permanent status — not just a transition to statehood or independence — and that a pact exists between Puerto Rico and the United States.

Debate over these issues has caused "political, social, cultural and economic damage to Puerto Rico," Jarabo said. Their clarifaction tends to stabilize Puerto Rico's political situation, he added.

The House speaker was interviewed following a ceremony in Hato Rey honoring the memory of Dominican patriot Juan Pablo Duarte.

In Jarabo's opinion, the "Achilles heel" of the plebiscite process continues to be "drastic difference of vision, of opinion, of philosophy between the Senate and House in Washington."

Sen. J. Bennett Johnston, D-La., chairman of the Senate Energy and Natural Resources Committee, demands that plebiscite language include detailed descriptions of the status alternatives — statehood, independence and enhanced commonwealth.

The House Interior and Insular Affairs Subcommittee, chaired by Virgin Islands Del. Ron de Lugo, passed a bill in the last Congress which offered these status choices but did not specify the condition under which the winning status would be granted by Congress.

Initially, Johnston had introduced legislation which would bind Congress to grant the winning status, under the precise terms included on the plebiscite ballot. The House subcommittee, backed by the House leadership, rejected this self-executing approach. Johnston deleted the self-executing clause from the plebiscite legislation he recently introduced in this new Congress.

MEMORANDUM

TO: Miriam J. Ramírez de Ferrer
President - Puertoricans in Civic Action

FROM: Luis Costas-Elena, Esq.
Eugenio S. Belaval, Esq.

DATE: January 17, 1991

RE: Analysis and Revision of a Draft Dated November 16, 1990 of a Proposed Bill to be Introduced in the Senate of the United States During the First Session of the 102nd Congress Which Provides for a Referendum on the Political Status of Puerto Rico

GENERAL CRITIQUE

1. The structure of the draft dated November 16, 1990 is unncessarily complex; it makes repeated references to other laws without identifying withing the Act what exactly is sought to be accomplished. This creates both obfuscation and an opportunity for undesirable results, such as abstruse tax loopholes.

2. The definition of "Commonwealth" is weasel worded, and designed for false advertising. On the one hand the definition speaks of Puerto Rico enjoying sovereignty "like a state, to the extent provided by the Tenth Amendment" but on the other hand speaks of additional sovereignty or "autonomy consistent with its character, culture and location." This additional sovereignty is unlimited and open ended; and thus signifies in effect an associated republic or independent nation joined to the United States by Treaty or Compact. Since such is the result, that result

should be made clear, if only for the sake of fairness, honesty and truth in advertising. For example, nowhere does the Commonwealth definition point to any power that Congress keeps over Puerto Rico. In fact, in view of this definition, under what constitutional power could Congress thereafter act over Puerto Rico?

3. The statement that under such a status definition United States citizenship is "guaranteed and indefeasible to the same extent as that of citizens born in the several states" is contrary to the 14th Amendment of the United States Constitution and thus is erroneous as a matter of law. The United States Department of Justice has testified on this point in the past Congressional Hearings on this bill. See testimony of Stuart Gerson, U.S. Assistant Attorney General, before the House Interior & Insular Affairs (June 28, 1990).

Again the wording creates false expectations, and is misleading, which is reprehensible particularly in a plebiscite process that requires utmost honesty and objectivity.

4. The definition of Commonwealth as now worded, since it would be in this federal statute when enacted, could be utilized subsequently and misconstrued to limit the present Congressional territorial powers over Puerto Rico and the present federal jurisdiction over Puerto Rico - whether or not there is a plebiscite!

5. For Statehood there is no level playing field. Although present Commonwealth status is the most expensive status for the federal treasury, the draft unhesitatingly increases the present costs to the federal treasury; but for Statehood (which is the only status that can actually reduce federal costs) the draft places stumbling blocks. The draft stretches out long into the future the obtention of political rights for the United States citizens of Puerto Rico, curtails the economic grants and benefits of Statehood, but immediately imposes taxation for the individual citizens. The draft basically trades off the political rights of the United States citizens of Puerto Rico and their economic welfare for the sake of the corporations known as 936.

The establishment of two transitions, one before Statehood and another after Statehood, is utterly senseless and demeaning. As shown in the study Puerto Rican Statehood: A Pre-condition to Sound Economic Growth, by Harvard professor Glen Jenkins and others, the admission of Statehood can be achieved without adversely affecting the federal treasury and the Gramm Rudman Hollings budget process. Any problem can easily and correctly be solved via the cover over or expenditure methods.

COMMENTS AND OBSERVATIONS WITH RESPECT TO PARTICULAR PROVISIONS OF THE DRAFT OF THE BILL

1. SECTION 101(b)

This section provides that the referendum shall also include an option of "Neither of the Above". The way the draft is structured creates uncertainty as to what the prevailing legal structures applicable in Puerto Rico will be if the option "Neither of the Above" obtains majority vote, and thus, what congressional power will Congress have over Puerto Rico. Thereby, it should be expressly provided that in such case, Puerto Rico continues subject to the congressional powers over the territories under the territorial clause of te U.S. Constitution, and that the U.S. Constitution will be fully applicable to Puerto Rico.

2. SECTION 101(c)(1)

This section relates to the applicable law of the statute which should be the federal law. As such, said provision should read: "The referendum shall be conducted pursuant to this Federal act. The eligibility to vote ..."

3. SECTION 101(c)(2)

This section provides that the Federal laws applicable to the election of the Resident Commissioner of Puerto Rico shall also apply to the referendum. However, this provision should be deleted since it would provide a backway to allow non-residents of Puerto Rico to vote in the referendum. Said federal statute could be interpreted to permit such vote by a non-resident. 14 U.S.C.A. 1973, FF(5)(c). Instead this federal act should contain specific federal election laws.

4. The draft of this bill, unlike former S-712, does not expressly provide any mechanism for the much needed federal supervision of the election. Please refer to S-712.

5. SECTION 101(f)

This provision is objectionable the way it is drafted and the 14-day period prior to election provided for the distribution before the referendum is impracticable and makes such distribution a mockery of the intent of the provision. It should read, "The President shall provide a referendum information booklet to each voter household in Puerto Rico at least 60 days before the referendum. There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

6. SECTION 201

The structure of this provision is objectionable. Please refer to the above General Critique.

7. SECTION 202

There is no need for this language (which is also objectionable) since we are in this part of the draft discussing the Statehood option. The provisions should read: "The current constitution of Puerto Rico as ratified by the people at the referendum held on June 4, 1951 is hereby accepted as the Constitution of the State".

8. SECTION 206

The structure of this provision is objectionable. Please refer to the above General Critique.

9. SECTION 208(a)(b)

This provision is objectionable ince the basic structure of the bill is to provide a transitional period prior to the declaration of Puerto Rico as a State of the Union; accordingly, all laws of the United States should be fully applicable upon the obtention of Statehood majority vote in the referendum. At the same time it should be that after such mayority vote for statehood the commitment expressed in Section 101(c) is in full force and effect. As such it should be clear that during said transitional period, Puerto Rico shall be considered a part of the United States and an incorporated territory of the United States. Thus, this provision should read as follows: "All of the laws of the United States shall have the same force and effect as of the date of the declaration and admittance of Puerto Rico as a State of the Union". During the period between the date of the referendum in which Statehood obtains the majority vote and the date of the declaration and admittance of Puerto Rico as a State of the Union, Puerto Rico will be subject to the Congressional powers over territories, and the U.S. Constitution shall apply 'ex propio vigore' in Puerto Rico."

10. The reference made to Puerto Rico in the provisions with respect to the transitional period prior to Statehood which uses the term Commonwealth is objectionable; the term to be used for clarity purposes should be the forthcoming State of Puerto Rico.

11. SECTION 212

This section is not applicable in this part when the option of Statehood is presented, therefore, it should be deleted.

12. SECTION 213

This provision should also contain the same criteria that is expressed in the Independence provision since Independence and Statehood are the two legitimate options for which a transitional period is provided and as such, the criteria of economic development should be also expressed under Section 213 which should read: "... and solely for the purposes of effecting a smooth and fair transition for the new state with a minimum of economic dislocations and in order to promote economic development and to promote federal agencies to assume or expand responsibilities for the administrations and enforcement of federal taxes and programs affecting the citizens residing in the new state".

13. SECTIONS 213, 214

The provisions related to economic adjustments provided for in these sections are objectionable. Please refer to the General Critique, but, in particular, they are objectionable because there are really two transitional periods in this structure; one before Statehood and another, after Statehood, both being unnecessary. Section 214 (e)(2)(A) provides that the taxes collected in certain instances under the Internal Revenue laws of the United States shall be covered into the Treasury of Puerto Rico to the extent such cases exceed the applicable excess expenditures of the United States allocable to such portion of the fiscal taxes. However, in the case of the Commonwealth option, such criteria is applicable only to the additional excess expenditures and does not cover any current expenditures, which is totally discriminatory against statehood and constitutes favoritism towards Commonwealth.

14. SECTION 317

The independence provision in this section provides for grandfathering for certain mortgage loans, such as those guaranteed by GNMA, FNMA and FHLB. Under Statehood in order not to create an economic dislocation, this kind of mortgage loans which are presently tax exempted under the laws of the Commonwealth, should also be grandfathered exempted. The Statehood part of the draft should have a specific provision, which should read: "All mortgage loans guaranteed by GNMA, FNMA, FHLB and other U.S. Government instrumentalities, tax exempted under the laws of the Commonwealth on the date prior to the declaration and admittance of Puerto Rico as a State of the Union shall be tax exempted under the Internal Revenue laws of the U.S. until maturity".

15. Under title II, for Statehood, there should be a similar provision as in Section 404. The regulatory review as it pertains to Statehood should also applys to make sure

that during the transitional period prior to Statehood all agencies are guided by the policies we suggest in our amended Sections 201 and 208.

16. SECTION 308(a)(2)

This section should expressly declare that the Constitution of the United States will no longer apply in Puerto Rico.

17. SECTION 317

This section should be deleted completely. The problems of the present deposit insurance system in the U.S. (e.g., F.D.I.C., S & L crises) makes it impossible to provide assistance in this area and would create an enormous burden and cost to the existing system which cannot be, at this time, accounted for.

18. SECTION 402

The definition of Commonwealth is unacceptable. The language utilized creates the false impression that said definition is the definition of the present existing Commonwealth, merely by so including this wording in a law to be considered and approved by Congress, the wording can easily be construed as a federal definition of the present Commonwealth status, with the additional negative consequence that said definition would change and alter the current judicial decisions on Commonwealth by the federal courts. Also, whether or not the referendum is held, the wording could be used to construe a limitation on the congressional power over Puerto Rico retroactive to 1952! Moreover, the definition creates a juridical status attuned to the Confederacy against which a civil war was pought. The question would arise as to under what provision can Congress act thereafter in relation to Puerto Rico and whether Congress could negotiate or relinguish its constitutional powers and mandate, particularly its territorial powers. The definition and the provisions of Section 402(a)(c) are totally objectionable and go counter to the opinion of the U.S. Department of Justice.

19. SECTION 403

It should be clear that the provisions of this section shall not be applicable to: (i) the jurisdiction of the federal courts in Puerto Rico; (ii) the applicability of any constitutional provision of the U.S. Constitution which may be applicable to Puerto Rico as of the date of the ratification of Section 101(e); (iii) the law pertaining to election and representation in Congress of the Resident Commissioner. The most important deficiencies of this Section 403 is that it is undemocratic and does not give the United States citizens of Puerto Rico a voice and participation in the determination of which federal law shall not be applicable in the Commonwealth of Puerto Rico. It grants the Governor of Puerto Rico dictatorial powers to determine which law will be applicable and will not be applicable to the U.S. Citizens in Puerto Rico. As such, the application of Section 403 must require a referendum vote by the resident citizens of Puerto Rico as to which federal law shall apply in the provisions of Section 403.

20. SECTION 408(b)

This section which requires a consultation with the Governor of Puerto Rico "Prior to nominating any person to serve in Puerto Rico whose appointment requires the advice and consent of the Senate of the United States..." should expressly exclude any appointment in the federal judiciary system.

21. SECTION 411

The provisions of this section should be clear in that it will not encompass any action which violates the First Amendment of the Constitution of the U.S. and the corresponding judicial interpretation thereof by the federal courts.

THE EMERGENCY COMMITTEE ON PUERTO RICAN STATEHOOD AND THE STATUS OF ENGLISH IN THE UNITED STATES

1666 Connecticut Avenue, N.W., Suite 403
Washington, D.C. 20009
(202) 387-9840
FAX (202) 387-3447

Gerda Bikales
Chairman

Steve Workings
Executive Director

TESTIMONY

presented to the

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

on behalf of

THE EMERGENCY COMMITTEE ON PUERTO RICAN STATEHOOD

AND THE STATUS OF ENGLISH IN THE UNITED STATES

Steve Workings

Executive Director

January 30, 1991

The Emergency Committee on Puerto Rican Statehood and the Status of English in the United States appreciates the opportunity to present these comments on S. 244, the Puerto Rico Status Referendum Act.

The Committee represents a network of well-informed activists who are deeply concerned about the unwillingness of the 101st Congress to recognize and address the potentially disastrous consequences of adopting legislation leading to statehood for Puerto Rico, without setting in place some precautionary measures to bridge the language gap between Puerto Rico and the United States.

Failure at this juncture of the admissions process to protect the common language that has traditionally united the diverse peoples of the United States will transform us, instantly and irrevocably, by Congressional fiat, into an officially bilingual country, very much like Canada, with its unmanageable language conflicts. There can be no mistake about this -- we have in S. 244 the necessary and sufficient makings of an American Quebec. It is the intention of the Emergency Committee to awaken our fellow citizens to this impending tragedy, and to offer some viable legislative proposals that will mitigate the effect of the language split in the fifty confederated states and yet allow the fifty-first state much latitude in maintaining its Spanish language and culture.

The Emergency Committee recognizes the principle of self-determination for Puerto Rico. Puerto Ricans have a right to decide whether the island should become independent of the United States, remain a "free associated state" in a Commonwealth relationship, or join the Union as our 51st state.

Of these three options, it should be understood that statehood is the most radical one. For the people of Puerto Rico, it is an irrevocable choice, and one that implies fairly rapid evolutionary and unavoidable cultural changes as the island becomes attractive to residents from the mainland who will move there in large numbers. But for the American people, it means the incorporation into its midst of a territory that has actively and successfully resisted America's language and customs for nearly 100 years, and has a history of violent opposition to the United States that includes assassination attempts on our President and on Members of Congress.

Furthermore, once Puerto Rico is admitted to statehood, the American people has no way of reconsidering this union, no matter what problems it may cause. Statehood is a marriage of the strictest and most old-fashioned kind, with no way out. No divorce is possible.

The United States has a proud history of granting statehood to territories with varying cultural traditions, some quite different from that of the receiving society. Every time, it gave careful consideration to these differences, and placed appropriate conditions upon the would-be states before finalizing the statehood grant. The best known example is that of Utah in 1896, a territory with a Mormon majority which had to agree to the abolition of polygamous marriages and conform to the monogamous norm that characterized family life in all the other states.

In the area of language policies, the requirements changed with every territory under consideration, but involved the mandated use of English by legislative and judicial bodies, in official proceedings and promulgations, and the establishment of a public school system in the English language. In the case of New Mexico, where Spanish was strongly established, a twenty-year transition period was provided by law, and some concessions allowing for limited use of Spanish were made permanent under the state's constitution.

In past Congressional reviews of the status of Puerto Rico-U.S. relations, language differences were recognized as a major, though not insurmountable barrier to statehood. In 1966, the Congressionally-appointed United States-Puerto Rico Commission on the Status of Puerto Rico said:

> If Puerto Rico becomes a State it would be a case of an area possessing a homogeneous, distinctive culture being incorporated into the United States. The experience with Hawaii, although so different in so many important ways, attests to the capacity of the U.S. citizens and the union of the States to develop full Statehood with cultural diversity and without territorial contiguity. Statehood would necessarily involve a cultural and language accommodation to the rest of the federated States of the Union. The Commission does not see this as an insurmountable barrier, nor does this require the surrender of the Spanish language nor the abandonment of a rich cultural heritage.

Last year, however, the Senate Committee on Energy and Natural Resources took the curious approach that Puerto Rico was so extremely different from any other territory ever considered for statehood in all our history, that no precedents were applicable. The best way to handle any problems intrinsic in these cultural differences, apparently, is to ignore them altogether.

The Emergency Committee on Puerto Rican Statehood and the Status of English in the United States disagrees strongly with this approach. It reminds Congress and the American public that we are all witnesses to the tragic unraveling of Canada, a nation that shares with us a commitment to democracy, cultural pluralism and human dignity. Knowing what we know, it would be an act of negligence and irresponsibility to blunder into our own Quebec disaster, with our eyes wide open yet unseeing.

It is understandable that some Members of Congress may be lulled into reassurance on this point by the parade of Puerto Rican witnesses appearing before them and articulating their positions in perfect English. Yet it would be politically naive to believe that in the absence of any legislation to prevent it, these very same gentlemen, once they are elected to the U.S. Senate and to the U.S. House of Representatives, will not experience memory losses with regard to English and will insist on giving their speeches on the floor in the Spanish language.

It is far better to foresee these problems and take the necessary steps to avoid this scenario, than to try to act after the fact.

The legislation leading to a plebiscite must be amended to include key provisions and be accompanied by additional Congressional actions:

- A declaration that English is the official language of the United States. As such, it is the language of spoken and written discourse and communication, of Congress, the Administration and all its agencies, and the Courts
- A guarantee that all government services in Puerto Rico will be available in English.
- A requirement that all appointed federal officials must speak, read and understand the English language.
- A Congressional rule that all speeches in and publications of the House of Representatives and the Senate, and that all official acts of Congress, shall be in English.
- A mandate that all official oral and written communications between the federal government and all state and local governments shall be in English.
- Federal appropriations to improve the extent and quality of English-language instruction in Puerto Rico.

President Franklin Delano Roosevelt understood the nature of our pluralistic society when, in 1937, he wrote to José Gallardo, head of the Puerto Rican Reconstruction Administration:

> It is an indispensable part of American policy that the coming generation of American citizens in Puerto Rico grow up with complete facility in the English language ... with the understanding that English is the official language of the country.

This Congress can mark a continuance in our nation's building of diversity, unity, and harmony, or it can mark a turning point. Heed the words of Senator Henry Jackson, who said:

> A condition precedent to [Puerto Rican] Statehood must be the recognition and acceptance of English as the official language. The continuance of Spanish as a second language would not be inconsistent with this requirement.

President Roosevelt, Senator Jackson, and Congress' own appointees have realistically recognized the cultural and linguistic hurdles presented to us by Puerto Rican statehood. These same people generously offered to overcome them. Their observations and advice are even more befitting today.

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Congressional Precedents for Requiring the Use of English as a Precondition to Statehood

Congress is currently considering legislation (S. 244 and HR 316) that could lead to the admission of Puerto Rico as our 51st state. In a major departure from the past, Congress is ignoring the language differences of the territory under consideration. Below is a summary of instances where Congress has required the use of English as a precondition to statehood.

The Language of the Voting Process

As a condition of statehood, Congress required New Mexico (admitted 1912) to adopt a constitutional provision that voting ballots contain English and Spanish versions of the proposals; and that the squares where the voter checks his choice be labeled in both English and Spanish.

The Language of Public Schools

Arizona (admitted 1912), New Mexico, and Oklahoma (admitted 1907) were required by Congress, as a condition of statehood, to provide in state constitutions for a system of public schools conducted in the English language.

Knowledge of English by Public Officials

Three states, Arizona, New Mexico and Oklahoma were required, as a condition of statehood, to adopt laws mandating that "...ability to read, write, and speak the English language sufficiently well to conduct the duties of office without the aid of an interpreter shall be a necessary qualification for all State officers."

English as the Language of Judicial and Legislative Proceedings

For the Territory of Orleans (admitted 1812), Congress required that "after the admission of said territory of Orleans as a state into the Union, the laws which such state may pass shall be promulgated, ... its judicial and legislative proceedings conducted in the language in which the laws and the judicial proceedings of the United States are now published and conducted."

Source: Statutes at Large

01/28/91

ENGLISH FIRST
OUR SYMBOL IS THE STATUE OF LIBERTY TORCH CAPTURING THE SPIRIT OF IMMIGRANTS WHO LEARNED ENGLISH AND BECAME FULL MEMBERS OF AMERICAN SOCIETY

TESTIMONY OF

P. GEORGE TRYFIATES
EXECUTIVE DIRECTOR, ENGLISH FIRST

SUBMITTED TO THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
FOR HEARINGS TO BE HELD FEBRUARY 7, 1991

IN OPPOSITION TO S. 244 UNLESS AMENDED
PUERTO RICO STATUS REFERENDUM ACT

8001 FORBES PLACE, SUITE 102, SPRINGFIELD, VIRGINIA 22151 (703) 321-8818, FAX (703) 321-8408

Congress has again taken up the question of the status of Puerto Rico with the introduction of S. 244. Its goal is to give the voters of Puerto Rico the right to choose their own political status, either statehood, commonwealth or independence. This laudable goal is rife with challenges for Congress.

The most important challenge is to make sure that the Puerto Rico voters are fully informed as to the nature of their decision. As a result, S. 244 attempts to provide as many details about each option as possible. However, one very important issue is left out of the legislation: the question of language. It is an issue which cannot be ignored.

There is virtual unanimity of all concerned parties that the voters of Puerto Rico should have all the information they need when they go to cast their ballots. Senator Bennett Johnston is correct in calling for fully informing Puerto Rico voters. When he introduced the present bill, Senator Johnston said, "An exercise in self-determination, to be meaningful, requires two elements. First, an understanding on the part of the Puerto Rican people of what they are choosing ..." The Senator then asks the key question: "What does the word 'statehood' tell you ... about the Spanish language?" He suggests that "These are not extraneous details. These are the core issues which dictate the choice. A vote by the people of Puerto Rico without an understanding of the meaning and consequences of their choice would be worse than meaningless. It could be mischievous, as unfulfilled expectations are treated with a lack of commitment by the Congress."

The Senator further comments that "Deception of ourselves and of the people of Puerto Rico does not serve our interests, nor those of Puerto Rico."

Senator Johnston's words were echoed the same day by Senator Malcolm Wallop who referred to previous comments by Senator Johnston to the same effect: "we should develop the precise terms and conditions for Statehood, Independence and Commonwealth with all the social, economic, and cultural implications" (emphasis added). Senator Wallop stated that "I agree with those sentiments" and spoke of his "belief that we need to devote both the time and effort to spell out precisely what this vote entails. We should deceive neither the citizens of Puerto Rico nor ourselves."

The leaders of Puerto Rico have also expressed concern about language policy. They themselves want the Spanish language protected. Particular concern for this has been expressed with regard to the statehood option.

Puerto Rico Governor Rafael Hernandez Colon, an advocate of Commonwealth, offers five criteria for a successful plebiscite. One of these is "clear and complete definitions of each status formula." He, too, notices that S. 244 ignores the language issue. He points out that "Puerto Ricans form a distinct cultural nationality" and that 60% of Puerto Ricans speak no English.

Gov. Hernandez would like to change the statehood definition to ensure that Spanish is protected on the Island. However, English First would point out that the commonwealth definition should also be enhanced to ensure that English will be protected in the United States.

Nonetheless, Gov. Hernandez is correct when he states that "Congress cannot responsibly ignore these expectations. ... If Congress believes that statehood presupposes a willingness to blend into the American melting pot, then this must be made clear to the people of Puerto Rico." On this point, the Governor is right.

The Independence Party leader, Senator Ruben Berrios Martinez very eloquently set forth his concerns about language and culture issues at last week's hearings. He points out that "All the political parties of Puerto Rico ... officially proclaim that the Spanish language, and Puerto Rico's culture ... are non-negotiable under any status option. No party would stand a chance in Puerto Rican elections if they did not so proclaim. The primary loyalty of Puerto Ricans is to Puerto Rico."

In last week's hearings, former Governor Carlos Romero Barcelo, a statehood advocate, expressed concern that S. 244 stacked the deck against the statehood option because of the bill's economic provisions. He suggested that without modification the bill "will promote misinformation." Furthermore, Gov. Romero was "worried that the excess of detailed definitions contained in S. 244 could slow down" the referendum process.

However, Gov. Romero's solution of "no information" in order to avoid "misinformation" is duplicitous. Although he appealed to Senator Johnston's call for fully informed voters -- especially when it was to his advantage -- Gov. Romero was the only one of the three Puerto Rico leaders who failed to affirm that same imperative. There is no doubt that the bill needs more information for the voters, not less.

There is further evidence that Puerto Rico wants a clear definition of language policy. Reacting to concern that the Spanish language will be threatened, the commonwealth-dominated Puerto Rico House of Representatives passed a bill last fall to eliminate English as one of the island's two official languages. This is an unmistakable signal of the confusion that exists in Puerto Rico over language policy. That confusion can and must be cleared up.

True, the Spanish-only bill may have been a political ploy by commonwealth advocates to destabilize the statehood position before the referendum. But, as was stated above, the commonwealth option in S. 244 can also be improved to express this Congress's commitment to prevent a federal policy of bilingualism.

Were it not for Gov. Romero, there would indeed be unanimous consent among all concerned, including English First -- and surely also including the American people -- that the voters of Puerto Rico should be completely and fully informed of what each status option will mean.

If this is true, then surely the question of language should be addressed. If Congress is to be true to its concerns for a fully informed voter, then provisions concerning the English language must be included in S. 244.

In addition to the need to ensure that the voters in Puerto Rico are not confused over the meaning of the three options, Congress should also be taking into account the views of the people of the United States. So far, they have been left out of the Puerto Rico status question. They have never called for the addition of a non-English speaking state. There is no outcry by voters in the United States for a 51st state which cannot -- and which steadfastly asserts that it will not -- speak English.

Furthermore, eighteen states have already declared that English is the official language of government in those states. One-third of the Union, therefore, has declared its belief that conducting government in English is the best policy. In all but one of the states where referendums on the question of official language have been held, overwhelming majorities have declared themselves in favor of official English.

The question of language policy is further informed by the fact that every state to enter the Union has done so with the full understanding that the United States is English-speaking. If Puerto Rico were to become a state under the current bill, it would be the first ever to join after its legislature had voted against the use of English. The Puerto Rico House's action is unprecedented for a potential state.

On the other hand, it is not unprecedented to require language policies dealing with the use of English as a condition of statehood. Senator Johnston's home state of Louisiana was one of the first of which such a requirement was made. If the United States has made itself clear in the past, why should it not do so now?

Congress cannot achieve the goal of a "more perfect Union" by admitting a state that has positively expressed its will against the use of English and against the idea of ever assimilating.

When it was suggested in last week's hearings that New Mexico's model of statehood -- in which it was said that 40% of the people still speak Spanish -- was one which Puerto Rico could follow, Senator Berrios reacted with great emotion. He denounced any idea of statehood for Puerto Rico on the model of New Mexico. Most telling of all was his assertion that even Puerto Rico's statehood advocates do not want a statehood like New Mexico's -- and Senator Berrios's claim went totally unchallenged by either Gov. Romero or Gov. Hernandez.

The reason that the question of statehood receives so much attention, especially on the question of language policy, is that it is the one option which is not revocable. Once a state is in the Union, it cannot go out. In short, some believe that language policy is a Pandora's Box. However, it would be best to deal with the issues now -- while both Puerto Rico and the United States have policy options, rather than later -- after statehood has sealed Puerto Rico forever within the American Union.

Our northern neighbor shows that there is precedent for a small population requiring bilingualism of the majority. Canada is now on the verge of destruction as a result of that nation's compulsory federal policy of bilingualism. The policy was supposedly designed to help unify Canada. It has had precisely the opposite effect. Even English Canada today is increasingly ambivalent about keeping French-speaking Quebec in confederation.

Canada's compulsory federal bilingualism was imposed on the nation in response to years of second-class treatment of French-speaking Canadians. The latter could demand that they be accorded federal services in French throughout Canada. The federal government, recognizing its past alleged "mistreatment," chose to impose compulsory federal bilingualism. For the United States, Puerto Rico offers an undeniable parallel to Quebec.

Although our federal motto is "E Pluribus Unum," there is greater precedent now for the demands of compulsory bilingual services. Once Puerto Rico joins the Union, those demands will be intensified. The great benefits of a Union held together by a single language from shore to shore -- and then some -- could be undermined and ultimately eliminated.

The impact of the three choices upon the United States itself must be taken into account. If Puerto Rico, no matter what its status, were to demand an imagined right to federal (or other governmental) services or operations in a language other than English, then the United States must be prepared to reject the demand. By the same token, if Congress wishes to admit a Spanish-speaking state to the Union -- with no reservations or conditions upon language -- then it should say so up front. The voters in the United States have as much right to know where their legislators stand on that question as voters in Puerto Rico do to know the full meaning of the three status options.

In light of the need for a fully informed voter in Puerto Rico, an informed voter in the United States, the total lack of precedence for admitting a state which has rejected English before admission, and the established precedent of setting language policy before admission, English First suggests that the following be added to S. 244:

1. English First agrees with Senator Berrios that statehood should not be considered "until an overwhelming majority of the Puerto Rican people speak English." However, an additional measure should be added to the commonwealth option stating that the United States will not offer any more services in Spanish for Puerto Ricans than already are policy and that it explicitly reserves the right at any time to eliminate any Spanish-language services which it now offers.

2. Provisions should be added to S. 244 such that:

(a) Neither the United States nor any State shall be compelled to provide services in any language other than English after the admission of Puerto Rico as a State or the decision by Puerto Rico to adopt enhanced Commonwealth status.

(b) The State of Puerto Rico shall guarantee the right of English speaking citizens of the United States to services from the State government of Puerto Rico in the English language.

(c) The State of Puerto Rico will commit to promoting the language and culture of the United States as a whole within the State in order to promote the continued "perfect Union" of the United States and to put it on a par with the Nation and the individual States.

Provisions such as the above would, in our view, improve the legislation. They address issues which should be considered now, while there is still time for flexibility. Without measures which clearly affirm the English-speaking nature of the American Union, English First can not in good conscience support S. 244.

English First would like to express its thanks to Chairman Johnston and the committee for the opportunity to have its views on the record.

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